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By Hand Delivery

Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Complaint of National Republican Senatorial Committee, No. MUR 494

Ladies and Gentlemen:

Enclosed for filing on behalf of Campaign for America, Jerome Kohlberg, Eileen Capone, and Douglas Berman is their Response to the Complaint filed with the Commission by the National Republican Senatorial Committee. Also enclosed are the declarations of Ms. Capone and Mr. Berman.

As the enclosed materials make readily apparent, the Complaint in this case has no merit, and the Commission should take no further action in this proceeding. In order to expedite that result, we request the opportunity to meet with the relevant members of the Commission's Staff to discuss this matter at their earliest convenience.

We look forward to a prompt resolution of this case, and thank you for your attention to this matter.

Sincerely,

Robert P. Parker

Robert P. Parker
Counsel to Respondents

Enclosures

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**FEDERAL ELECTION COMMISSION
Washington, D.C.**

In the Matter of:

Complaint of the National Republican
Senatorial Committee

No. MUR 4940

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**RESPONSE OF CAMPAIGN FOR AMERICA ET AL. TO THE COMPLAINT
FILED BY THE NATIONAL REPUBLICAN SENATORIAL COMMITTEE**

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**FEDERAL ELECTION COMMISSION
Washington, D.C.**

In the Matter of:)
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Complaint of the National Republican)
Senatorial Committee)
)
_____)

No. MUR 4940

**RESPONSE OF CAMPAIGN FOR AMERICA ET AL. TO THE COMPLAINT
FILED BY THE NATIONAL REPUBLICAN SENATORIAL COMMITTEE**

Pursuant to 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.6, Campaign for America ("CFA"), Jerome Kohlberg, Douglas C. Berman and Eileen M. Capone (as CFA's Treasurer) (collectively, "Respondents") respectfully submit this Response to the Complaint filed by the National Republican Senatorial Committee ("NRSC").

As we explain below, the NRSC's charge that Respondents have violated the campaign finance laws has no factual or legal basis, and the Commission should take no action with respect to the Complaint.

I. INTRODUCTION

The NRSC's Complaint purports to set forth an "open-and-shut case" that Respondents have violated the campaign finance laws. (Complaint at 1). Far from "open-and-shut," however, the NRSC's accusations are based on a misrepresentation of the facts and the law.

The NRSC's Complaint levels three equally baseless charges:

- The NRSC asserts that CFA is a "political committee" by virtue of a single \$466,029 expenditure on a campaign ad. Not only are the facts wrong, but Commission regulations adopted pursuant to a Supreme Court constitutional mandate provide that certain non-profit, tax exempt organizations under § 501(c)(4) of the Internal Revenue Code are entitled to make "independent expenditures," including the underwriting of ads regarding candidates for the U.S. Senate. As a § 501(c)(4) advocacy group (and a "qualified nonprofit corporation" under FEC regulations (11 C.F.R. § 114.10)), CFA's ads were constitutionally privileged.
- According to the NRSC, CFA's reportable expenditure occurred on October 16, 1998, and thus was subject to the 24-hour reporting requirement of 2 U.S.C. § 434(c)(2). The fact is that the expenditure occurred on October 14, and was not subject to the 24-hour rule. CFA complied with FEC disclosure requirements in a timely fashion.
- Finally, the NRSC alleges that CFA should have included in its campaign ads not only its own sponsorship of the ads as required by 2 U.S.C. § 443d(a)(3), but also the identity of its principal contributor. The NRSC purports to draw support for this position from FCC practice, not FEC regulations. The NRSC also misstates the FCC rule on which it relies. In any event, the identity of CFA's principal contributor was fully disclosed in compliance with all relevant FEC

reporting requirements. There is no reason to look to the guidelines that another agency has adopted for purposes of enforcing the Commission's regulation.

More generally, the NRSC accuses CFA of "reporting failures" and an "obvious effort to conceal" the details of CFA's funding and activities. (Complaint at 5). Yet, ironically, the Complaint is based entirely on public documents that CFA filed with the Internal Revenue Service (CFA's Form 990 tax returns), the Congress (CFA's Lobbying Act reports) and, most notably, with the Federal Election Commission itself (CFA's report regarding its 1998 Kentucky advertisements). These documents lay open to public scrutiny the nature and scope of CFA's activities and the sources of its funding, including the funds that CFA devoted to the advertisement that is the centerpiece of the NRSC's accusations. The fact that this information was available to the NRSC at all belies the allegation that CFA ever concealed its activities, much less did so improperly.

Likewise, the NRSC alleges that CFA's purported "concealment" of its activities was intended to deflect public scrutiny of CFA's activities in connection with the 1998 congressional elections. (Complaint at 5). The NRSC's Complaint centers on one television advertisement broadcast in Kentucky in October 1998. CFA sponsored that advertisement with funds donated by Jerome Kohlberg, and so reported those facts to the Commission on October 22, 1998, five days before the ad in question was first televised. Then, on October 28, 1998, around the time the ad in question was being aired, and a week before the date of the 1998 congressional

elections (November 3), The Wall Street Journal published an editorial criticizing CFA, Mr. Kohlberg and the ad. See Do as We Say, WALL ST. J., Oct. 28, 1998 at A22. The editorial identified Mr. Kohlberg as CFA's "main financier" and noted specifically the cost of the Kentucky ads and that Mr. Kohlberg was the source of the funds used to pay for them. Nonetheless, the NRSC now says that CFA has "deprived [the public] of information . . . that it need[ed] to file a complaint" challenging CFA's sponsorship of the ad in advance of the election. (Complaint at 5). Particularly in the face of The Wall Street Journal's editorial, the NRSC's charge that, by the timing of its FEC filing, CFA concealed any material fact, or deprived CFA's critics of the opportunity to challenge CFA's conduct, is frivolous on its face.

The NRSC's most desperate and far-reaching allegation -- that CFA is (or was) a political committee as defined in the Federal Election Campaign Act ("FECA" or the "Act") -- also has an ironic quality to it. The NRSC contends, without foundation or explanation, that CFA is not entitled to the benefit of the Commission's regulation because it spent "nearly a half million dollars on television advertisements that Campaign for America itself characterized as independent 'expenditures' under FECA," and campaign related activity allegedly became "a major purpose of Campaign for America in 1998." (Complaint at 2-3). The fact is, however, that had CFA adopted the approach to campaign finance matters championed by the NRSC's chairman and many of its members, CFA would not have reported the costs of the Kentucky ads as an "independent expenditure" at all. Nonetheless, consistent with CFA's views on these matters, CFA reported its

sponsorship of the Kentucky ad to the Commission, pursuant to the regulations governing independent expenditures by advocacy groups. The NRSC's suggestion that one fully-disclosed advertisement transformed CFA from an issue advocacy group to a disguised front for campaign-related activities is not only baseless, but flies in the face of the undeniably conscientious approach to disclosure of campaign-related activities that CFA exhibited in this case.

The foregoing are merely the most blatant defects in the Complaint -- those most readily apparent from the face of the document itself. They reveal the NRSC's Complaint for what it truly is: a not-too-subtle effort to muzzle CFA's advocacy for campaign finance reform, or at least to deter CFA from injecting campaign finance reform as an issue in senatorial elections. A review of the facts, and a reasoned application of the relevant legal principles, confirms that the NRSC Complaint should be rejected with no further action by the Commission.

II. FACTUAL BACKGROUND

CFA was established in April 1995 under the direction of its first president, the late Congressman Mike Synar. Congressman Synar became ill later in 1995, and he died in January 1996. CFA was essentially defunct during Congressman Synar's illness, and for more than a year thereafter. CFA resumed its activities in March 1997 under its new president, Douglas Berman. See Affidavit of Douglas Berman ("Berman Affidavit") ¶ 2.^{1/}

^{1/} The Berman Affidavit is attached as an Exhibit to the NRSC Complaint. The Affidavit was prepared and executed pursuant to a third-party subpoena issued (continued...)

In 1997 and 1998, CFA undertook a series of activities to promote the reform of this country's campaign finance laws. The purpose of these activities was to influence the public to support the idea of campaign finance reform, and to encourage elected officials to support campaign finance reform legislation. These activities included a lobbying program (Berman Affidavit ¶¶ 4, 8); a nationwide grass-roots petition effort and lobbying phone banks; a radio issue advocacy campaign (*id.* ¶ 10); a \$1.1 million, five-state radio and television issue advocacy campaign (*id.* ¶ 11); and a newspaper issue advocacy campaign that covered two major national newspapers and two influential Capitol Hill publications (*id.* ¶ 12). See Declaration of Douglas C. Berman ("Berman Declaration") ¶ 3.^{2/} CFA has also engaged in numerous other educational and advocacy activities that are not subject to reporting requirements and are not specifically accounted for in CFA's records.

In 1997, CFA's revenues totaled \$1,482,485, and it spent \$1,575,526 on program-related activities. (See Berman Affidavit, Exhibit C). In 1998, CFA's revenues were \$3,043,106, and it spent \$2,677,215 on program-related activities. Including administrative expenses, CFA spent over \$4.5 million during 1997-98. (See Declaration of Eileen Capone, Exhibit A ("Capone Declaration")).^{3/}

^{1/} (...continued)
at the behest of the Republican National Committee in a lawsuit that the RNC filed against the Commission in 1998.

^{2/} The Berman Declaration is submitted herewith.

^{3/} The Capone Declaration is submitted herewith.

As a part of its broad effort to promote the cause of campaign finance reform, CFA sponsored two television advertisements concerning the campaign finance reform positions of the candidates in the 1998 election for the U.S. Senate in Kentucky, Jim Bunning and Scotty Baesler. The first advertisement, entitled "Dog," showed various pictures of Mr. Bunning, with a voice-over recitation of the following text:

Scotty Baesler was a leader in passing a bill to clean up our campaign finances.

Jim Bunning? On campaign finance reform, he voted no. Why?

Because Bunning has been sniffing out special interest money to feed his campaign.

In fact, HMOs gave Bunning thousands in campaign contributions, then Bunning flip-flopped and opposed real HMO reform.

Now Bunning is hunting for even more special interest money.

Taking special interest money. Flip-flopping on HMO reform.

In Kentucky, that dog just don't hunt.

The other advertisement, called "Again," also contained pictures of Mr. Bunning.

The voice-over text of the advertisement was as follows:

Remember how Jim Bunning took money from HMOs, then opposed a patients protection act?

Well he's at it again. Hunting for campaign money, rolling over for special interests.

Now we learn, Bunning took thousands from health care interests, then voted to slash Medicare. Forcing seniors into expensive private health insurance.

With all this special interest money, no wonder Bunning voted "no" on campaign finance reform.

On November 3rd, send Jim Bunning and his hungry dogs, back to the pound.

The purpose of these advertisements was to present a description of the candidates' contrasting positions on campaign finance reform, and to demonstrate that campaign reform is an important issue to voters. These were, however, the only ads that CFA has sponsored that have mentioned any candidate for federal office in that capacity.

(See Berman Declaration ¶ 5).^{4/}

CFA contracted with The Communications Company, a media consulting firm, for the production of the Kentucky advertisements and the acquisition of television advertising time slots from Kentucky television stations. Based on CFA's plan for the advertising campaign, The Communications Company projected that the total cost of the campaign, including both advertisements, would be \$466,029. CFA received an invoice for that amount from The Communications Company on October 13, 1998. Mr. Berman, CFA's then-president, approved that invoice for payment on October 14, 1998, and instructed the officials who manage

^{4/} Although the Berman Affidavit attached to the NRSC Complaint includes a description of both Kentucky ads, the NRSC Complaint challenges only the second ad, "Again."

CFA's financial affairs to make arrangements for timely payment of the invoice. (See Berman Declaration ¶ 8).

Beginning on October 14, 1998, The Communications Company began to issue checks for payment of television advertising time slots. These checks were issued by The Communications Company on CFA's behalf, against CFA's commitment to pay, and subsequent payment of, The Communications Company's \$466,029 invoice. (See Capone Declaration ¶ 5, Ex. B).

In light of these facts, CFA's understanding was that it incurred the obligation to pay The Communications Company \$466,029 on or before October 14, 1999. Due to an administrative problem with a new CFA bank account, however, the wire transfer of the funds to pay that obligation did not occur until two days later. (See Capone Declaration ¶ 8; Berman Declaration ¶ 8).

The payments for television advertising time slots during the period October 14 to October 22, 1998, all concerned the advertisement entitled "Dog." That ad was broadcast during the period October 16, 1998 through October 27, 1998. Payments concerning the advertisement entitled "Again," the ad cited in the NRSC's Complaint, did not begin until October 23, 1998. That ad was broadcast from October 27, 1998 to November 2, 1998. (Capone Declaration ¶¶ 5-6, Exs. B, C).

Because The Communications Company was not able to purchase all of the television time slots that had originally been planned, the cost of the advertising campaign was less than originally projected. The total media cost of the advertising campaign, including both commercials, was \$314,885.10. The total media cost of the

advertisement entitled "Again" was \$190,045.60. CFA has received a refund from The Communications Company for the difference between its \$466,029 payment and the total cost of the two ads. (See Capone Declaration ¶¶ 4, 7, Ex. B).^{5/}

Consistent with its principles regarding campaign finance reform, and its overall views on campaign finance law and policy (including due consideration of the Commission's regulatory approach to these issues), CFA undertook to disclose to the public the pertinent details regarding its Kentucky advertisements, including its expenditures on both advertisements. Following discussions with a consultant retained by CFA (who was a former FEC employee) regarding the mechanics of reporting CFA's Kentucky ads, CFA concluded that the appropriate course was to disclose the details of its advertising campaign by submitting a report to the FEC on FEC Form 5, which is the Commission's form for reporting "independent expenditures" by persons other than political committees.^{6/} CFA faxed to the FEC and placed in overnight mail a completed Form 5 on October 21, 1998. The FEC confirmed receipt of the submission the next day, October 22, 1998. (See Berman Declaration ¶¶ 13-14; Berman Affidavit, Exhibit A). The FEC thus received CFA's report five days before the ad cited in the NRSC's Complaint was first broadcast, and one day before The

^{5/} The media costs cited in the text do not include the cost, about \$30,000, of production of the two ads. That cost was also factored into, and covered by, CFA's payment of \$466,029 to The Communications Company. (See Capone Declaration ¶ 4).

^{6/} CFA also filed a copy of the Form 5 with the Kentucky Secretary of State.

Communications Company, on CFA's behalf, issued a check for payment of the first broadcast of that ad.

On October 28, 1998, The Wall Street Journal published an editorial criticizing CFA and the Kentucky advertising campaign. The Journal correctly identified CFA as the sponsor of the ads, named Mr. Kohlberg as the source of the funds used to pay for the ads, and specified the total cost of the advertisements (based, as discussed above, on CFA's and The Communications Company's original projection and the corresponding amount which CFA had paid to The Communications Company). Thus, the information that CFA reported to the Commission, and which CFA fully disclosed, was readily available to the public (including CFA's critics) well before the date of the 1998 congressional election. (See Berman Declaration ¶ 15, Ex. B).

In sum, CFA spent over \$4 million on program-related activities during 1997 and 1998. The only CFA activity that related to candidates for federal office were the Kentucky ads; the two ads together accounted for less than 8% of CFA's program expenditures during those two years, and the one ad about which the NRSC complains accounted for less than 5%. CFA fully disclosed the pertinent information regarding the ad almost two weeks before the 1998 election, and The Wall Street Journal incorporated the salient facts from CFA's disclosure in an editorial published a week before the election.

Given these facts, the NRSC's allegations that CFA has violated the campaign finance laws by concealing its activities, or that the Kentucky ads

transformed CFA into a political committee whose primary purpose is the election or defeat of candidates for federal office, are frivolous.

III. ARGUMENT

A. CFA Determined To Treat Its Sponsorship Of the Kentucky Ad Project As An Independent Expenditure, And Complied With The FECA And Commission Regulations By Reporting It As Such

The Supreme Court has held that political advertising and related communications are subject to the FECA and the Commission's regulations only if they constitute "independent expenditures." An independent expenditure is an expenditure made for a communication that expressly advocates the election or defeat of a specified candidate ("express advocacy"), as opposed to a communication that explains a general position or provides information on a political issue ("issue advocacy"). See Buckley v. Valeo, 424 U.S. 1, 80 (1976) (expenditures subject to the campaign finance laws are limited to "funds used for communications that expressly advocate the election or defeat of a clearly identified candidate"); Federal Election Comm'n v. Massachusetts Citizens for Life, Inc., 479 U.S. 238, 248-49 (1986) ("MCFL") (same); see also 11 C.F.R. § 109.1 ("independent expenditure" means, inter alia, "an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate") (emphasis added).

Buckley v. Valeo is the benchmark for distinguishing between express advocacy subject to FECA and FEC regulations, and issue advocacy beyond the Commission's jurisdiction. In that case, the Supreme Court held regulation of issue advocacy unconstitutional on First Amendment grounds and offered a list of eight

terms which, when used in election-related communications, mark the dividing line between constitutionally privileged issue advocacy and regulated express advocacy: "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat," and "reject." 424 U.S. at 44 n.52. The Supreme Court concluded that the mere identification of a candidate or description of a candidate's position on an issue is insufficient to place a communication in the express advocacy category; rather, "explicit words of advocacy of election or defeat" are required. *Id.* at 43-44.

Since Buckley, the weight of judicial authority holds that the boundary between express and issue advocacy must be strictly observed, lest the Commission's oversight and regulation of political speech impinge on Constitutionally protected rights.^{7/} The courts have held that communications which do not include any of the terms specifically identified in Buckley are beyond the Commission's purview. As one district court aptly summarized, in an opinion adopted by the court of appeals:

What the Supreme Court did [in Buckley] was draw a bright line that may err on the side of permitting things that affect the election process, but at all costs avoids restricting, in any way, discussion of public issues. The Court seems to have been quite serious in limiting FEC enforcement to *express* advocacy, with examples of words that directly fit that term. The advantage of this rigid approach, from a First Amendment point of view, is that it permits a speaker or writer to know from the outset exactly what is permitted and what is prohibited. In the stressful context of public discussions with deadlines, bright lights and cameras, the speaker need not pause to debate the shades of

^{7/} See Faucher v. FEC, 928 F.2d 468 (1st Cir.), cert. denied, 502 U.S. 820 (1991); Maine Right to Life Committee v. FEC, 98 F.3d 1 (1st Cir. 1996); Federal Election Comm'n v. Central Long Island Tax Reform Immediately Committee, 616 F.2d 45 (2d Cir. 1980); North Carolina Right to Life, Inc. v. Bartlett, 168 F.3d 705 (4th Cir. 1999); Federal Election Comm'n v. Christian Action Network, Inc., 110 F.3d 1049 (4th Cir. 1997).

meaning in language. The result is not very satisfying from a realistic communications point of view and does not give much recognition to the policy of the election statute to keep corporate money from influencing elections in this way, but it does recognize the First Amendment interest as the Court has defined it.

Maine Right to Life Committee, Inc. v. FEC, 914 F. Supp. 8, 12 (D. Maine)

(emphasis in original), aff'd per curiam, 98 F.3d 1 (1st Cir. 1996).

With these principles in mind, the majority of courts have likewise adopted this approach, and have held that communications similar in language and tone to the CFA ad described in the NRSC Complaint are not express advocacy, and the sponsorship of such ads is not an independent expenditure subject to FEC jurisdiction. Faucher v. FEC, 928 F.2d 468 (1st Cir.), cert. denied, 502 U.S. 820 (1991), for example, concerned a voter guide that featured the positions of candidates on pro-life issues. The guide had a "yes" next to the names of candidates who supported the right-to-life position. Noting the danger of straying from the eight phrases listed in Buckley, the court held that the guide was issue advocacy, and not subject to FEC regulation. Id. at 472. In Federal Election Commission v. Central Long Island Tax Reform Immediately Committee, 616 F.2d 45, 53 (2d Cir. 1980), the Second Circuit held that a pamphlet which contained a photograph of a congressman and listed his voting record on tax legislation, and noted that the congressman's record was contrary to the group's position on tax reform, was issue advocacy, and not express advocacy. Likewise, in Federal Election Commission v. Christian Action Network, Inc., 110 F.3d 1049 (4th Cir. 1997), the court considered a television commercial which informed viewers in a provocative and decidedly

hostile fashion, on the eve of the 1992 election, of then-Governor Clinton's position on homosexual rights. The court rejected the argument that the ad "unmistakably" called for candidate Clinton's defeat, holding that the FEC's authority extends only to "explicit words of advocacy." *Id.* at 1050, 1052.

Nonetheless, for the reasons discussed above -- including CFA's understanding of the Commission's position on this issue as a regulatory matter, and CFA's similar approach with respect to campaign finance matters -- CFA did not take this strict approach to the definition of express advocacy and the regulation of independent expenditures. Rather, CFA adopted an approach consistent with its own stance on campaign finance reform, and took the path of full disclosure with respect to both of the Kentucky ads. CFA filed an independent expenditure report with the Commission when payments for the first ad, "Dog," began. The NRSC recognizes this point, and acknowledges that CFA itself opted to treat the cost of the Kentucky ads as an independent expenditure by reporting them as such. (Complaint at 2 ("By reporting the disbursements that financed such advertisements as 'independent expenditures,' Campaign for America itself classified the disbursements as 'independent expenditures' within the meaning of the Federal Election Campaign Act ('FECA')").^{8/}

^{8/} The fact that CFA submitted a report to the FEC that related to the entire Kentucky ad project, including the first ad, "Dog," reflects the care and commitment with which CFA addressed this issue. The first ad mentions the Kentucky Senate candidates, but it does not mention the 1998 election directly or indirectly, and it does not urge Kentucky voters to take any action with regard to the candidates. Even the second ad, "Again," falls short of the legal

(continued...)

Faced with what can only be characterized as CFA's conscientious compliance with the Commission's rules, yet fully determined to find some reason to embarrass CFA by accusing it of campaign finance law violations, the NRSC has had to fabricate, with no basis in law or fact, a series of phantom violations of the campaign finance laws. The NRSC's effort to punish CFA despite CFA's clear compliance with applicable law and regulations is unconscionable. For the reasons discussed in detail below, that effort should also be rejected based on a sound reading of FECA and Commission regulations.^{9/}

8/

(...continued)

standard by which express advocacy is currently judged, and under the current state of the law, many organizations might elect not to treat the second ad as requiring disclosure. CFA nonetheless disclosed all relevant information regarding both ads.

9/

CFA does not attribute these motives to the NRSC lightly. The fact is, the NRSC distributed a draft of its complaint to various publications, including The Wall Street Journal, prior to filing with the Commission, in an apparent effort to embarrass CFA. The Journal did not mention the draft. The draft complaint was noted in one Capitol Hill publication, along with a comment to the effect that the allegations against CFA were patently absurd.

B. Campaign For America Is Not A Political Committee

The NRSC's first series of accusations against CFA rests on the proposition that CFA should be treated as a political committee by virtue of its sponsorship of the Kentucky ad. From this premise, the NRSC concludes that CFA should be subject to the reporting requirements and contribution limits imposed on such organizations. (Complaint at 3-4). The NRSC's position that CFA should be treated as a political committee, however, is based on a gross distortion of a Supreme Court decision, and would undermine the regulatory scheme that the Commission adopted in response to that decision. The charge that CFA is a political committee, and therefore subject to the statute and regulations applicable only to political committees, has no merit.

The Act and Commission regulations generally prohibit a corporation from making independent expenditures -- that is, as discussed above, from funding express advocacy. (See 2 U.S.C. § 441b). This general prohibition has been upheld by the courts. See FEC v. National Right to Work Committee, 459 U.S. 197 (1982). In MCFL, however, the Supreme Court held unconstitutional the application of this prohibition to independent expenditures by nonprofit advocacy groups that meet certain criteria,^{10/} even if such groups would otherwise be covered by the prohibition.

^{10/} The MCFL criteria include: (1) the corporation's express purpose should be the promotion of a political idea, and not business activity; (2) the corporation should have no shareholders or others with a claim to its assets; and (3) the corporation was not established by a corporation or labor union, and it should have a policy of not accepting donations from those entities. See 479 U.S. at 261-62.

Then, in dicta, the Court offered an exception to this exception: if the advocacy group's independent expenditures "become so extensive that the organization's major purpose may be regarded as campaign activity," then the group may be subject to FEC regulation as a political committee. 459 U.S. at 262.

The FEC has adopted regulations, 11 C.F.R. § 114.10, that codify MCFL. These regulations establish a fixed and objective test by which certain advocacy groups will be treated as "qualified nonprofit corporations," and thereby enjoy the constitutional safeguard established by MCFL. Thus, 11 C.F.R. § 114.10(d) provides that a "qualified nonprofit corporation may make independent expenditures . . . without violating the prohibition on corporate expenditures. . . ."

The NRSC asserts that CFA is not a "qualified nonprofit corporation" under § 114.10 because "campaign activity was a major purpose of Campaign for America in 1998." (Complaint at 2-3). According to the NRSC, under this test, presumably drawn from the MCFL dicta, CFA should be treated as a political committee. Notably, the sole fact on which the NRSC bases this conclusion is that CFA "spent nearly a half million dollars on [the Kentucky] television advertisements" described above. The NRSC then accuses CFA of violating FECA and Commission reporting requirements and other regulations applicable only to political committees.

For several reasons described below, however, the NRSC's charge that CFA is a political committee does not stand even to a cursory analysis, much less a reasoned application of the law. We will treat first the NRSC's incorrect statement of the law, and then address the NRSC's factual errors.

1. The NRSC Accusation that CFA is a Political Committee is Based on an Improper Legal Standard

Insofar as CFA is aware, neither the FEC nor the courts have ever applied the MCFL "major purpose" test to an advocacy group like CFA and determined that the group is subject to the regulations that govern political committees. In fact, both the Supreme Court's decision in MCFL and the FEC's implementing regulations reveal an intention to define "political committee" in this respect very narrowly, and to impose a strict standard on the Commission's regulation of advocacy groups.

Nonetheless, the NRSC contends that CFA should be treated as a political committee because "campaign activity was a major purpose of Campaign for America in 1998."^{11/} That statement is either a deliberate or recklessly negligent misrepresentation of the Supreme Court's decision in MCFL. The Court did not state that an advocacy group may be treated as a political committee when "campaign activity is a major purpose" of the organization, as the NRSC represents in its Complaint. (Complaint at 2-3). Rather, the Court has held that a "political committee" is an organization that is either "under the control of a candidate or the major purpose of which is the nomination or election of a candidate." MCFL, 479 U.S. at 252 n.6 (emphasis added) (quoting Buckley v. Valeo, 424 U.S. at 79). Based on this definition, the MCFL dicta was: "[S]hould [the advocacy group's] independent spending become so extensive that the organization's major purpose may

^{11/} Complaint at 2-3 (emphasis added).

be regarded as campaign activity, the corporation would be classified as a political committee." Id. at 262 (emphasis added). Thus, even assuming, arguendo, that the Supreme Court's dicta establishes a viable test for determining whether an advocacy group may be treated as a political committee, the question is not, as the NRSC would have it, whether the independent expenditure became "a" major part of the organization's program -- that is, one of many purposes or objectives; the accurate question is whether campaign activity became the organization's primary purpose overall.

Other language in MCFL confirms this point. In a passage in MCFL that the NRSC ignores (although it followed immediately after the "major purpose" language on which the NRSC apparently relies), the Court identified political committees as "those groups whose primary objective is to influence political campaigns," and cautioned that "there is no need for the sake of disclosure to treat MCFL any differently than other organizations that only occasionally engage in independent spending on behalf of candidates." 479 U.S. at 262 (emphasis added); see also, id. at 252 n.6 (MCFL's independent expenditures were entitled to constitutional protection because "[i]ts central organizational purpose is issue advocacy, although it occasionally engages in activities on behalf of political candidates" [emphasis added]). The Court in MCFL also cited that portion of the Buckley decision in which it had noted that the term "political committee" should be construed narrowly, and in which it cited with apparent approval the decisions of two lower courts holding that non-partisan organizations may not be treated as political

committees at all. See MCFL, 242 U.S. at 262 citing Buckley, 424 U.S. at 79.

These passages confirm that, whatever legal effect the "major purpose" test might have, it does not apply to organizations that make only occasional forays into federal elections, and whose primary activity remains issue advocacy.^{12/}

Notwithstanding MCFL, the Commission has not adopted the "major purpose" test per se in its regulations. In fact, when the Commission adopted its rules on qualified nonprofit corporations, it specifically announced that it would not attempt to codify the "major purpose" test. See FEC, "Explanation and Justification of Part 114," in 1 FEDERAL ELECTION CAMPAIGN FINANCING GUIDE (CCH) ¶ 930 at 3165 (1998) (hereafter, "FEC Explanation"). On the contrary, as noted above, the FEC has declared in its regulations that an issue-advocacy organization such as CFA may make independent expenditures, so long as it meets the criteria for treatment as a qualified nonprofit corporation or "QNC." 11 C.F.R. § 114.10(d). The only criterion for maintaining QNC status that imposes any restriction on the right to make independent expenditures is the requirement that the QNC have the status "described in 26 U.S.C. § 501(c)(4)." Id., § 114.10(c)(5). As the Commission recognized when it adopted this portion of the rule, § 501(c)(4) and implementing IRS regulations

^{12/} Even assuming, arguendo, that the applicable standard were the MCFL standard as interpreted by the NRSC, for the reasons explained above, campaign activity could not even be considered a major purpose of CFA. When considering the broad and varied scope of CFA's activities over any reasonable period of time -- since its founding in 1995, during the relevant two-year period from 1997 to 1998, or in 1998 -- in relation to the expenditures it made with respect to one ad in 1998, campaign activity was never a major purpose of CFA. See supra pg. 11.

“allow social welfare organizations to engage in a limited amount of political activity.” FEC Explanation, supra, at 3162; see IRS Rev. Rul. 81-95, 1981-1 C.B. 332 (a § 501(c)(4) corporation “may participate in lawful political campaign activities involving the nomination or election of public officials without adversely affecting its exempt status”). The only limitation on campaign activities by § 501(c)(4) organizations is that the organization must be “‘primarily’ engaged in promoting the common good and general welfare of the people or the community.” FEC Explanation, supra, at 3162, citing 26 C.F.R. § 1.501(c)(4)-1(a)(2)(i).

The § 501(c)(4) requirement in the Commission regulation thus meshes well with the Supreme Court’s decision in MCFL. Under the Commission’s rules, to maintain QNC status, an organization must be primarily engaged in its public objective, but may engage in a limited amount of political activity; under MCFL, an advocacy organization is entitled to engage (at least) in occasional political activity, up to the point where its primary activity (or “major purpose”) is to influence political campaigns.

In sum, the FEC regulations and MCFL establish a demanding test that must be satisfied before the Commission can treat an advocacy group as a political committee, allowing § 501(c)(4) organizations and other advocacy groups to engage in occasional campaign-related activity. The question before the Commission, therefore, is whether the NRSC Complaint discloses circumstances that might lead the Commission to conclude that CFA has crossed the threshold from an advocacy group

to an organization that is, essentially, a front for political and, more specifically, electoral activity. As we explain below, the answer to that question is no.

2. There Is No Factual Basis for Treating CFA as a Political Committee

CFA undeniably meets the requirements for treatment as a QNC under FEC regulations. CFA is a § 501(c)(4) corporation. Its primary activity is issue advocacy with respect to a matter -- campaign finance reform -- that CFA believes is important to our nation's future. CFA is entitled to engage in political campaign activity, such as the 1998 Kentucky ads, without drawing into question its § 501(c)(4) status or, by implication, its status as a QNC. See IRS Rev. Rul. 81-95, supra.

The Commission must apply its rules as drafted. See Brock v. Cathedral Bluffs Shale Oil Co., 796 F.2d 533, 536 (D.C. Cir. 1986) ("It is axiomatic that an agency must adhere to its own regulations. . . ."); see also Exportal Ltda. v. United States, 902 F.2d 45, 49-51 (D.C. Cir. 1990) (the "plain meaning of [an agency's] regulations is dispositive"; if an entity is entitled to an exemption under agency regulation, that exemption must be granted in accordance with the regulation's terms). As a QNC under the Commission's regulations, CFA was entitled to make independent expenditures. (See 11 C.F.R. § 114.10(d).) Under the Commission's regulations, therefore, it has no basis for treating CFA as a political committee.

Even under the Supreme Court's purported "major purpose" test, the result is the same. CFA's "major purpose" is not, and has never been, campaign activity. Indeed, given the facts that the NRSC had in hand, its charge that CFA is a "political committee" is irresponsible and malicious. The record is clear that issue

advocacy has always been CFA's "central organizational purpose," and its "occasional[] . . . independent spending on behalf of candidates" is not disqualifying. MCFL, 479 U.S. at 252 n.6 and 262.

The NRSC's assertion that CFA is a political committee rests on the single allegation that CFA made one \$466,029 independent expenditure for the Kentucky ads. That fact is neither correct nor, in itself, sufficient to support the NRSC's charge. A clear picture of CFA's 1998 Kentucky ads, particularly in the context of CFA's other activities, makes this point clear.

Since CFA's inception in 1995, and particularly since 1997, CFA has engaged in an extensive program on a number of fronts to promote the organization's campaign finance reform agenda. During its lifetime, CFA has received over \$5 million in contributions. CFA received about \$1.5 million in contributions in 1997, and about \$3 million in 1998, the year in which the ad challenged by NRSC was aired. Moreover, as CFA's publicly available tax returns show, in 1997 and 1998 alone, CFA spent over \$4.2 million on program-related activity. During this same period, CFA spent about \$600,000 in administrative expenses.

The NRSC Complaint focuses on one advertisement, "Again." The media cost of that ad was only \$190,045.60, and the total media cost of both Kentucky ads -- "Again" and "Dog" -- was only \$314,885.10. The NRSC's charge that CFA is a political committee because it spent \$446,029 on "express advocacy" is thus inaccurate. Moreover, the cost of this advertisement was only about 6.2% of CFA's total expenditures during 1998, and under 8% of CFA's program expenditures

that year. On purely financial terms, therefore, the ad expenditure cannot be viewed as so extensive as to render campaign activity as CFA's "major purpose."

On a qualitative basis, the record is equally clear. The Kentucky ad, indeed the entire Kentucky ad project, is dwarfed by CFA's 1997-98 \$1.1 million issue advocacy radio commercials that covered five states. CFA also paid for approximately 80% of another set of radio commercials in Colorado, Indiana, Nebraska and Kansas. In 1998, too, CFA ran issue advocacy ads in the Washington Post, New York Times, and two Capitol Hill publications, Roll Call and The Hill. The Post and Times ads alone cost two-thirds as much as the Kentucky ad. CFA also worked with legislators to craft strategy and urge passage of campaign finance reform, and launched a grass-roots petition effort and a lobbying phone bank. And none of this includes other educational and advocacy activities in which CFA was regularly involved, for which there is no reporting requirement, and for which no specific accounting was made.

Finally, given the Supreme Court's constitutional blessing on advocacy groups' "occasional" endorsement of political candidates, MCFL, 479 U.S. at 262, it is important to note that the Kentucky ads are the only ads that CFA has ever sponsored that mention by name any candidate for federal office in that capacity. This solitary instance falls within the exception recognized in MCFL for "occasional" campaign activity by issue advocacy groups, and falls far short of meeting the "major purpose" test described in the Court's dicta.

This conclusion is further supported by the few judicial decisions to apply the MCFL decision and the Commission's regulations. The Second Circuit held in FEC v. Survival Education Fund, Inc., 65 F.3d 285 (2d Cir. 1994), for example, that a major grass-roots mailing by an advocacy organization qualified for the constitutional protection of MCFL. During the 1984 presidential election, the Fund sent a solicitation mailing to 31,000 recipients. The solicitation referred to "November's crucial election day" and asked for contributions so that the Fund could "let[] [the voting public] know why Ronald Reagan and his anti-people policies must be stopped." The court of appeals held that the mailing was immune from FEC regulation under MCFL. Id. at 292-93. For purposes of applying MCFL and the Commission regulations, CFA's Kentucky ad was identical to the Fund's mailing in all material respects.

In sum, given the complete picture of CFA's program, which is (for the most part) readily available from the public documents on which the NRSC rests its Complaint, there is absolutely no basis for the conclusion that campaign activity or express advocacy is CFA's "major purpose," or that CFA may therefore be treated as a political committee. Of all the numerous advertisements and other advocacy programs that CFA has sponsored since its inception, the NRSC Complaint cites only one advertisement. The expenditure for that advertisement was a small fraction of CFA's program expenditures -- whether those program expenditures are viewed from the perspective of 1998 alone, or over the entire course of CFA's existence. On these

facts, there is no ground for concluding that campaign activity or express advocacy are, or ever were, CFA's "major purpose."

C. CFA Did Not Violate The Commission's Reporting Requirements

The NRSC alleges that CFA violated the provision of the Act, 2 U.S.C. § 434(c)(2), which requires that organizations other than political committees report to the Commission within 24 hours independent expenditures in excess of \$1,000 that were made "after the 20th day" before an election.^{13/} As noted above, CFA did submit a report to the Commission pursuant to the applicable rules regarding the CFA-sponsored advertising in October 1998, and the NRSC's accusations on this point are meritless.

The NRSC acknowledges that, if the expenditure for the Kentucky ads occurred on October 14, 1998, as CFA maintains, then it occurred outside the 20-day window for 24-hour reports. (Complaint at 4 (October 14 was "one day before the 24-hour obligation began")). The NRSC alleges, however, that the expenditure for the Kentucky ads could not have occurred until October 16, 1998, because that is the date on which CFA received a contribution in the amount of the expenditure from

^{13/} The Act provides, in relevant part: "Any independent expenditure . . . aggregating \$1,000 or more made after the 20th, but more than 24 hours, before any election shall be reported within 24 hours after such independent expenditure is made." 2 U.S.C. § 434(c)(2).

FEC regulations regarding the 24-hour reporting requirement for non-political committee independent expenditures generally follow the statute: "Independent expenditures aggregating \$1,000 or more made by any person after the twentieth day, but more than 24 hours before 12:01 a.m. of the day of an election shall be reported within 24 hours after such independent expenditure is made." 11 C.F.R. § 109.2.

Mr. Kohlberg. By the NRSC's reckoning, this expenditure thus fell within the 20-day window in which reports of independent expenditures are required within 24 hours. In fact, however, the expenditure did occur on October 14, a 24-hour report was not required, and CFA's October 22 report was timely.

In early October 1998, CFA finalized arrangements for the Kentucky ad project. On October 13, 1998, CFA received an invoice for the cost of the advertisements. The invoice was approved for payment by CFA's then-President on October 14, 1998. Payments for the ads actually began on October 14. CFA contracted with The Communications Company, a media consultant, to identify available television advertisement time slots at Kentucky television stations, and purchase those slots for CFA's ads. The Communications Company's acquisition of, and payment for, those slots on CFA's behalf began on October 14. Logically, other things being equal, these payments on CFA's behalf and pursuant to CFA's obligation to cover the payments constitute an expenditure for reporting purposes. CFA also prepared instructions for a wire transfer of the funds on October 14.

CFA thus agreed to the ads, was contractually bound to proceed with the campaign and to make payment for the ads, and evidenced its intention to pay for the ads, on or before October 14, 1998. Although a wire transfer of funds to cover CFA's obligation was delayed for two days by an administrative problem concerning a new CFA bank account, the expenditure for the ads occurred on October 14, 1998,

when CFA became bound to cover the expenses of broadcasting the ads.^{14/} As the election was scheduled for November 3, 1998, October 14 is outside the 20-day window for 24-hour reports, as the NRSC itself concedes.

In these circumstances, failure to recognize October 14 as the date of the expenditure could result in long delays between the date on which an entity incurs an obligation with respect to a campaign-related activity, and the date on which that obligation is satisfied and an expenditure is reported to the Commission. If the rule were that a reporting obligation accrued when an entity sent funds to cover disbursements already made on its behalf, the entity could pay for an advertisement on credit, and avoid having to report the independent expenditure until long after the election. In other words, the NRSC's allegation that CFA's reporting obligation did not accrue on October 14, when CFA incurred the obligation to make the expenditure, and when payments on CFA's behalf began, would lead to the very result the NRSC improperly complains of in this case -- a delay in reporting expenditures.

The NRSC argues in its Complaint (albeit without any reference to legal authority) that the date of an independent expenditure should be linked to the date on which an ad was televised, and not the date on which the money was disbursed. The Commission's rules do not treat expenditures as equivalent to the

^{14/} This approach is consistent with Commission practice in other contexts. For example, with respect to expenditure reports by political committees, Commission regulations provide: "A debt or obligation, ... the amount of which is over \$500, shall be reported as of the date on which the obligation is incurred." 11 C.F.R. § 104.11(b) (emphasis added).

communications they pay for, however, and such an approach would be impractical. In the days before an election, advertising time slots are often at a premium, and availability shifts with each passing day. CFA and similar organizations are not necessarily aware of when their ads are broadcast until a final reconciliation -- such as the documents attached as Exhibits B and C to the Capone Declaration -- becomes available. They are, however, aware of when their obligations arise.

Finally, even if the Commission were to adopt the NRSC's approach, it still leads to the conclusion that CFA's October 22, 1998 report was timely. The Communications Company's records show that it did not begin to pay for the ad cited in the NRSC's Complaint ("Again") until October 23, 1998, the day after CFA's report was filed. That ad was broadcast from October 27 to November 2, 1998, also after CFA filed its report. Far from concealing information, as the NRSC alleges, by filing its report before the ad was either paid for or televised, CFA actually made its disclosure in advance.^{15/}

^{15/} Even assuming, arguendo, that CFA were required to file a 24-hour report by virtue of an October 16 expenditure, the NRSC's attempt to convey the impression that CFA was a week late in filing its report is still meritless. October 16, 1998 was a Friday. Accordingly, the deadline for a timely filing -- by Commission Rules, using U.S. registered or certified mail -- did not occur until the following business day, Monday, October 19. 11 C.F.R. § 100.19(b). Thus filed, the report would not have been placed on the public record until sometime later that week. The report that CFA filed was dated October 21, 1998, and the Commission acknowledged receipt the next day. (See Berman Declaration ¶ 14; Berman Affidavit, Exhibit A). The report was therefore submitted at about the same time as -- if not earlier than -- it would have been received by the Commission had it been filed by registered mail on October 19, 1998.

D. CFA Did Not Violate The Act Or The Commission's Sponsorship Disclosure Rules

The NRSC Complaint states that CFA "appears to have violated" the Act and the Commission's rules regarding the disclosure of advertising sponsorship. (Complaint at 4, emphasis added). As the NRSC's timidity in leveling this charge suggests, that accusation is groundless.

The FECA requires, in pertinent part: "Whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate . . . such communication . . . (3) . . . shall clearly state the name of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee." 2 U.S.C. § 441d(a)(3). The Commission's implementing regulation, 11 C.F.R. § 110.11(a)(1), is to the same effect.

CFA did provide the requisite disclosure in the Kentucky ads. The closing frame of the advertisement states in bold print that fills the television screen:

**PAID FOR BY CAMPAIGN FOR AMERICA
NOT AUTHORIZED BY ANY POLITICAL
CANDIDATE OR COMMITTEE**

This statement is accurate, and is all that the statute and Commission regulation require.

Nonetheless, the NRSC asserts that CFA "appear[s] to have violated 2 U.S.C. § 441d(a)(3)" on the premise that CFA should be required to disclose, in addition to its sponsorship of the ad, the identity of CFA's own principal contributor,

Jerome Kohlberg. The NRSC cites no authority for this requirement in FEC regulations or decisions. The only authority NRSC offers is a Federal Communication's Commission ("FCC") decision construing Section 317 of the Communications Act (47 U.S.C. § 317), which requires the identification of sponsorship of all broadcast advertising, commercial as well as political.

The fact that the statutory basis for the NRSC's accusation is within the FCC's jurisdiction, and not the FEC's, is adequate ground in itself for rejecting this charge. FCC practice has no application to FEC regulations, of course, and the FEC's adoption of additional disclosure requirements based on FCC practice would be inconsistent with the specific disclosure regime established by the FECA. Such requirements, therefore, would be unlawful. Galliano v. U.S. Postal Service, 836 F.2d 1362 (D.C. Cir. 1988). In Galliano, the court considered whether the Postal Service could treat a political solicitation as fraudulent under Postal Service regulations, even though the solicitation met the FECA disclosure requirements. The court said no:

A fine balance of interests was deliberately struck by Congress in the name and disclaimer requirements of FECA. Those provisions, we think it fair to infer, represent more than a minimal requirement that the Postal Service is free to supplement. Rather, we believe they were meant to provide a safe haven to candidates and political organizations with respect to those organizations' names and sponsorship. If FECA requirements are met, then as we comprehend that legislation, no further constraints on names and disclaimers may be imposed by other governmental authorities.

836 F.2d at 1370. As CFA met the FECA requirements, it is entitled to the statute's "safe haven."

An additional reason for rejecting the NRSC's charge is that the FCC regulatory scheme differs substantially from the FEC's. The Communications Act requires broadcasters to take reasonable steps to ensure that the true sponsor of an advertisement (political or otherwise) is identified in the ad. The FCC decisions in this field, therefore, arise in a statutory and regulatory context that differs from those over which the FEC presides; most significantly, the FEC regulations require disclosure of the sponsor and the fact that the sponsor lacks affiliation with a candidate or committee, and they require a separate report to the Commission regarding the source of the funds to make the independent expenditure.

Finally, even if the Commission were inclined to consider FCC practice, the NRSC Complaint misrepresents both the nature and purpose of the FCC rule. The FCC decisions construing the disclosure requirement in the Communications Act and implementing FCC regulation, including the Trumper decision cited in the NRSC Complaint, stand for the proposition that a principal who provided funding for an ad must be disclosed only if the principal also exercised editorial control over the ad. The FCC has, in fact, decided in other cases that the source of advertising funds need not be disclosed where the source did not also exercise editorial control. See Loveday v. Federal Communication Commission, 707 F.2d 1443 (D.C. Cir. 1983), aff'd 87 F.C.C. 2d 492 (1981). Accordingly, the single fact of financial sponsorship is not dispositive. Because the NRSC's charge that Mr. Kohlberg's identity should have been disclosed in the ad is based solely on the

proposition that Mr. Kohlberg provided the funding for the ad -- and not that he controlled the editorial content -- the NRSC's charge must be rejected.^{16/}

Finally, as the FCC noted in Loveday, the ultimate point of these disclosure regulations is to foreclose any misrepresentations regarding the sponsorship of an advertisement. 87 F.C.C. 2d at 497. There was no misrepresentation here. CFA has fully disclosed its affiliations and contributors, and those facts were highlighted in its report to the Commission and placed on the public record pursuant to the Act and FEC regulations.^{17/} The information was then highlighted in the Wall Street Journal editorial (discussed above) that was published while the ads in question were being aired. In sum, there was no shortage of disclosure -- and certainly no misrepresentation -- regarding CFA's activities or its affiliations. There is no need to look to another agency's regulations to make CFA's disclosure effective.

^{16/} In fact Mr. Kohlberg did not exercise editorial control over the Kentucky ads. Mr. Berman did. See Berman Declaration ¶ 6.

^{17/} Ironically, the complainant in Loveday based its allegation that the true sponsor of the ads in question had not been revealed on information contained in a campaign finance disclosure statement. 707 F.2d at 1445.

IV. CONCLUSION

CFA, of course, agrees that any citizen or organization has the right to file a complaint with the FEC. As demonstrated above, however, the NRSC Complaint in this instance rests on a political, and not a legal, foundation. Accordingly, the Commission should take no action on the Complaint filed by the National Republican Senatorial Committee.

Respectfully submitted,

Dated: December 8, 1999

By:



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**FEDERAL ELECTION COMMISSION
Washington, D.C.**

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In the Matter of:

Complaint of the National Republican
Senatorial Committee

No. MUR 4940

DECLARATION OF EILEEN M. CAPONE

I, Eileen M. Capone, declare and state as follows:

1. I am Treasurer of Campaign for America ("CFA"). I have personal knowledge of the matters set forth in this declaration.
2. Attached hereto as Exhibit A is a true and correct copy of CFA's Form 990 tax return for 1998. In 1998, CFA's total revenue was \$3,043,106. CFA spent \$2,677,215 that year on program-related activities, and \$357,882 on management and administration.
3. In 1997 and 1998, CFA contracted with The Communications Company to produce various advertisements to promote CFA's campaign finance reform agenda. These ads included two television commercials regarding the 1998 U.S. Senate race in Kentucky between Jim Bunning and Scotty Baesler. These ads were entitled "Dog" and "Again." In response to the complaint filed by the National Republican Senatorial Committee ("NRSC") with the Federal Election Commission, I asked The Communications Company to compile data regarding the cost of the two

Kentucky ads ("Dog" and "Again") and the dates when each of the ads was broadcast on Kentucky television stations.

4. Attached hereto as Exhibit B is a chart prepared by The Communications Company showing the amounts that it paid on CFA's behalf in connection with each broadcast of the two Kentucky ads. Based on my review of this chart (Exhibit B) and my conversations with the personnel at The Communications Company who were responsible for CFA's account, my understanding is that the media cost (that is, the cost of broadcasting) both Kentucky ads ("Dog" and "Again") was \$314,885.10. Of this total, the media cost for the second ad, "Again," was \$190,045.60. The total cost of producing the two ads was approximately \$30,000.

5. Exhibit B also shows the dates on which The Communications Company, acting on CFA's behalf, issued checks to pay for the broadcast of CFA's two Kentucky ads. Exhibit B shows that The Communications Company first issued checks to pay for the broadcast of the ad called "Dog" on October 14, 1998. The first checks to pay for the broadcast of the second ad, "Again," were issued on October 23, 1998.

6. Attached hereto as Exhibit C is an air time analysis of CFA's Kentucky ads, which was prepared on CFA's behalf based on the invoices for the actual broadcasts of the two Kentucky ads. The analysis shows that the advertisement called "Dog" was broadcast during the period October 16, 1998 to October 27, 1998. The second ad, "Again," was first broadcast on October 27, 1998, and was broadcast during the period October 27 to November 2, 1998.

7. Until recently, CFA had a positive account balance with The Communications Company, reflecting the difference between the \$466,029 that CFA paid for the two Kentucky ads and the total cost of producing and broadcasting those ads. The Communications Company has reimbursed CFA for that difference.

8. On October 14, 1998, CFA's then president, Douglas Berman, asked me to arrange for a wire transfer of \$466,029 from CFA to The Communications Company to pay for the two Kentucky ads. I prepared instructions to CFA's bank to make the transfer that day. At that time, however, CFA was in the process of establishing a separate bank account to handle certain transactions, including the transaction with The Communications Company concerning the Kentucky ads. As a consequence, CFA did not have the information necessary to consummate the wire transfer (e.g., the number of its new account), and the funds to make the payment were not available in CFA's new account, until October 16, 1998. The funds were deposited into the new account (and are reflected in CFA's records as a contribution from Jerome Kohlberg) on October 16, 1998, and the wire transfer was consummated on that date.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed at Mt. Kisco, New York this 7 day of December, 1999.


Eileen M. Capone

EXHIBIT A

EXHIBIT A

Return of Organization Exempt From Income Tax

OMB No. 1545-0047

1998

This Form is
Open to Public
Inspection

Department of the Treasury

Internal Revenue Service

Under section 501(c) of the Internal Revenue Code (except black lung benefit trust or private foundation) or section 4947(a)(1) nonexempt charitable trust

Note: The organization may have to use a copy of this return to satisfy state reporting requirements.

A For the 1998 calendar year, OR tax year period beginning 1998, and ending 19

B Check if:
☐ Change of address
☐ Initial return
☐ Final return☐ Amended return (required also for state reporting)

Please use IRS label or print or type. See Specific Instructions.

C Name of organization

THE CAMPAIGN FOR AMERICA PROJECT

Number and street (or P.O. box if mail is not delivered to street address)

C/O KISCO MANAGEMENT CORP.

111 RADIO CIRCLE

City or town, state or country, and ZIP + 4

MOUNT KISCO, NY 10549

D Employer identification number

52-1921317

E Telephone number

(202) 628-0610

F Check ☐ If exemption application is pendingG Type of organization ☒ Exempt under section 501(c) (04) (insert number) OR ☐ section 4947(a)(1) nonexempt charitable trust

Note: Section 501(c)(3) exempt organizations and 4947(a)(1) nonexempt charitable trusts MUST attach a completed Schedule A (Form 990).

H (a) Is this a group return filed for affiliates? ☐ Yes ☒ NoI If either box in H is checked "Yes," enter four-digit group exemption number (GEN) ☐(b) If "Yes," enter the number of affiliates for which this return is filed: ☐J Accounting method: ☒ Cash ☐ Accrual(c) Is this a separate return filed by an organization covered by a group ruling? ☐ Yes ☒ No☐ Other (specify) ☐K Check here ☐ if the organization's gross receipts are normally not more than \$25,000. The organization need not file a return with the IRS; but if it received a Form 990 Package in the mail, it should file a return without financial data. Some states require a complete return.

Note: Form 990-EZ may be used by organizations with gross receipts less than \$100,000 and total assets less than \$250,000 at end of year.

Part I Revenue, Expenses, and Changes in Net Assets or Fund Balances (See Specific Instructions on page 13.)

Revenue

1	Contributions, gifts, grants, and similar amounts received: STMT	1	
a	Direct public support	1a	3,041,254.
b	Indirect public support	1b	
c	Government contributions (grants)	1c	
d	Total (add lines 1a through 1c) (attach schedule of contributors) (cash \$ 3,041,254. noncash \$)	1d	3,041,254.
2	Program service revenue including government fees and contracts (from Part VII, line 93)	2	
3	Membership dues and assessments	3	
4	Interest on savings and temporary cash investments SEE STATEMENT 2.	4	1,852.
5	Dividends and interest from securities	5	
6a	Gross rents	6a	
b	Less: rental expenses	6b	
c	Net rental income or (loss) (subtract line 6b from line 6a)	6c	
7	Other investment income (describe)	7	
8a	Gross amount from sale of assets other than inventory	8a	
b	Less: cost or other basis and sales expenses	8b	
c	Gain or (loss) (attach schedule)	8c	
d	Net gain or (loss) (combine line 8c, columns (A) and (B))	8d	
9	Special events and activities (attach schedule)		
a	Gross revenue (not including \$ of contributions reported on line 1a)	9a	
b	Less: direct expenses other than fundraising expenses	9b	
c	Net income or (loss) from special events (subtract line 9b from line 9a)	9c	
10a	Gross sales of inventory, less returns and allowances	10a	
b	Less: cost of goods sold	10b	
c	Gross profit or (loss) from sales of inventory (attach schedule) (subtract line 10b from line 10a)	10c	
11	Other revenue (from Part VII, line 103)	11	
12	Total revenue (add lines 1d, 2, 3, 4, 5, 6c, 7, 8d, 9c, 10c, and 11)	12	3,043,106.
13	Program services (from line 44, column (B))	13	2,677,215.
14	Management and general (from line 44, column (C))	14	357,882.
15	Fundraising (from line 44, column (D))	15	
16	Payments to affiliates (attach schedule)	16	
17	Total expenses (add lines 16 and 44, column (A))	17	3,035,097.
18	Excess or (deficit) for the year (subtract line 17 from line 12)	18	8,009.
19	Net assets or fund balances at beginning of year (from line 73, column (A))	19	109,127.
20	Other changes in net assets or fund balances (attach explanation)	20	
21	Net assets or fund balances at end of year (combine lines 18, 19, and 20)	21	117,136.

FILE

Part II Statement of Functional Expenses

All organizations must complete column (A). Columns (B), (C), and (D) are required for section 501(c)(3) and (4) organizations and section 501(c)(29) nonexempt charitable trusts but optional for others. (See Specific Instructions on page 17.)

Do not include amounts reported on line 6b, 8b, 9b, 10b, or 16 of Part I.		(A) Total	(B) Program services	(C) Management and general	(D) Fundraising
22	Grants and allocations (attach schedule) (cash _____ noncash _____)	500,212.	500,212.	STMT 3	
23	Specific assistance to individuals (attach schedule)				
24	Benefits paid to or for members (attach schedule)				
25	Compensation of officers, directors, etc.				
26	Other salaries and wages	257,769.		257,769.	
27	Pension plan contributions	5,780.		5,780.	
28	Other employee benefits				
29	Payroll taxes	10,874.		10,874.	
30	Professional fundraising fees				
31	Accounting fees	4,000.		4,000.	
32	Legal fees	1,596.		1,596.	
33	Supplies	1,531.		1,531.	
34	Telephone	7,602.		7,602.	
35	Postage and shipping	829.		829.	
36	Occupancy	49,554.		49,554.	
37	Equipment rental and maintenance	6,340.		6,340.	
38	Printing and publications				
39	Travel	16,339.	16,339.		
40	Conferences, conventions, and meetings	1,992.	1,992.		
41	Interest	205.		205.	
42	Depreciation, depletion, etc. (attach schedule)	1,561.		1,561.	
43	Other expenses (itemize): a STMT 4	2,168,913.	2,158,672.	10,241.	
b					
c					
d					
e					
44	Total functional expenses (add lines 22 through 43) Organizations completing columns (B)-(D), carry these totals to lines 13-15	3,035,097.	2,677,215.	357,882.	

Reporting of Joint Costs. - Did you report in column (B) (Program services) any joint costs from a combined educational campaign and fundraising solicitation? ☐ Yes ☒ No

If "Yes," enter (i) the aggregate amount of these joint costs \$ _____; (ii) the amount allocated to Program services \$ _____; (iii) the amount allocated to Management and general \$ _____; and (iv) the amount allocated to Fundraising \$ _____

Part III Statement of Program Service Accomplishments (See Specific Instructions on page 20.)What is the organization's primary exempt purpose? **SEE STATEMENT 5**

All organizations must describe their exempt purpose achievements in a clear and concise manner. State the number of clients served, publications issued, etc. Discuss achievements that are not measurable. (Section 501(c)(3) and (4) organizations and 4947(a)(1) nonexempt charitable trusts must also enter the amount of grants and allocations to others.)

Program Service Expenses
(Required for 501(c)(3) and (4) orgs., and 4947(a)(1) trusts; but optional for others.)

a	CONDUCTED FOCUS GROUPS, RESEARCH AND ADVERTISEMENTS			
	(Grants and allocations \$ _____)			2,177,003.
b	COMMON CAUSE - PROJECT INDEPENDENCE 1250 CONNECTICUT AVENUE, NW WASHINGTON, D.C. 20036			
	(Grants and allocations \$ 500,212.)			500,212.
c				
	(Grants and allocations \$ _____)			
d				
	(Grants and allocations \$ _____)			
e	Other program services (attach schedule)			
f	Total of Program Service Expenses (should equal line 44, column (B), Program services)			2,677,215.

Part IV Balance Sheets (See Specific Instructions on page 20.)

Note: Where required, attached schedules and amounts within the description column should be for end-of-year amounts only.

		(A) Beginning of year		(B) End of year
Assets	45 Cash - non-interest-bearing		45	
	46 Savings and temporary cash investments	24,589.	46	21,839.
	47a Accounts receivable 47a			
	b Less: allowance for doubtful accounts 47b		47c	
	48a Pledges receivable 48a	150,000.		
	b Less: allowance for doubtful accounts 48b		48c	150,000.
	49 Grants receivable		49	
	50 Receivables from officers, directors, trustees, and key employees (attach schedule)		50	
	51a Other notes and loans receivable (attach schedule) 51a			
	b Less: allowance for doubtful accounts 51b		51c	
	52 Inventories for sale or use		52	
	53 Prepaid expenses and deferred charges		53	
	54 Investments - securities (attach schedule)		54	
	55a Investments - land, buildings, and equipment: basis 55a			
	b Less: accumulated depreciation (attach schedule) 55b		55c	
56 Investments - other (attach schedule)		56		
57a Land, buildings, and equipment: basis 57a	7,976.			
b Less: accumulated depreciation (attach schedule) 57b	5,921.	3,616.	57c	2,055.
58 Other assets (describe ►)	80,922.	58	NONE	
59 Total assets (add lines 45 through 58) (must equal line 74)	109,127.	59	173,894.	
Liabilities	60 Accounts payable and accrued expenses		60	
	61 Grants payable		61	
	62 Deferred revenue		62	
	63 Loans from officers, directors, trustees, and key employees (attach schedule)		63	
	64a Tax-exempt bond liabilities (attach schedule)		64a	
	b Mortgages and other notes payable (attach schedule)		64b	
65 Other liabilities (describe ► SEE STATEMENT 6)		65	56,758.	
66 Total liabilities (add lines 60 through 65)		66	56,758.	
Net Assets or Fund Balances	Organizations that follow SFAS 117, check here <input type="checkbox"/> and complete lines 67 through 69 and lines 73 and 74.			
	67 Unrestricted		67	
	68 Temporarily restricted		68	
	69 Permanently restricted		69	
	Organizations that do not follow SFAS 117, check here <input checked="" type="checkbox"/> and complete lines 70 through 74.			
	70 Capital stock, trust principal, or current funds		70	
	71 Paid-in or capital surplus, or land, building, and equipment fund		71	
	72 Retained earnings, endowment, accumulated income, or other funds	109,127.	72	117,136.
	73 Total net assets or fund balances (add lines 67 through 69 OR lines 70 through 72; column (A) must equal line 19 and column (B) must equal line 21)	-109,127.	73	117,136.
	74 Total liabilities and net assets/fund balances (add lines 66 and 73)	109,127.	74	173,894.

Form 990 is available for public inspection and, for some people, serves as the primary or sole source of information about a particular organization. How the public perceives an organization in such cases may be determined by the information presented on its return. Therefore, please make sure the return is complete and accurate and fully describes, in Part III, the organization's programs and accomplishments.

Part IV-B Reconciliation of Expenses per Audited Financial Statements with Expenses per Return

Part V List of Officers, Directors, Trustees, and Key Employees (List each one even if not compensated; see Specific Instructions on page 22.)

75 Did any officer, director, trustee, or key employee receive aggregate compensation of more than \$100,000 from your organization and all related organizations, of which more than \$10,000 was provided by the related organizations? ☐ Yes ☒ No
If "Yes," attach schedule - see Specific Instructions on page 22.

Part VI Other Information (See Specific Instructions on page 23.)

Yes No

76	Did the organization engage in any activity not previously reported to the IRS? If "Yes," attach a detailed description of each activity	76		X
77	Were any changes made in the organizing or governing documents but not reported to the IRS? If "Yes," attach a conformed copy of the changes.	77	X	
78 a	Did the organization have unrelated business gross income of \$1,000 or more during the year covered by this return?	78 a		X
b	If "Yes," has it filed a tax return on Form 990-T for this year?	78 b	N/A	
79	Was there a liquidation, dissolution, termination, or substantial contraction during the year? If "Yes," attach a statement	79		X
80 a	Is the organization related (other than by association with a statewide or nationwide organization) through common membership, governing bodies, trustees, officers, etc., to any other exempt or nonexempt organization?	80 a	X	
b	If "Yes," enter the name of the organization THE CAMPAIGN REFORM PROJECT and check whether it is <input checked="" type="checkbox"/> exempt OR <input type="checkbox"/> nonexempt.			
81 a	Enter the amount of political expenditures, direct or indirect, as described in the instructions for line 81	81 a		
b	Did the organization file Form 1120-POL for this year?	81 b		X
82 a	Did the organization receive donated services or the use of materials, equipment, or facilities at no charge or at substantially less than fair rental value?	82 a		X
b	If "Yes," you may indicate the value of these items here. Do not include this amount as revenue in Part I or as an expense in Part II. (See instructions for reporting in Part III.)	82 b	N/A	
83 a	Did the organization comply with the public inspection requirements for returns and exemption applications?	83 a	X	
b	Did the organization comply with the disclosure requirements relating to quid pro quo contributions?	83 b	N/A	
84 a	Did the organization solicit any contributions or gifts that were not tax deductible?	84 a	X	
b	If "Yes," did the organization include with every solicitation an express statement that such contributions or gifts were not tax deductible?	84 b	X	
85	501(c)(4), (5), or (6) organizations. - a Were substantially all dues nondeductible by members?	85 a	X	
b	Did the organization make only in-house lobbying expenditures of \$2,000 or less? If "Yes" was answered to either 85a or 85b, do not complete 85c through 85h below unless the organization received a waiver for proxy tax owed for the prior year.	85 b	N/A	
c	Dues, assessments, and similar amounts from members	85 c		
d	Section 162(e) lobbying and political expenditures	85 d		
e	Aggregate nondeductible amount of section 6033(e)(1)(A) dues notices	85 e		
f	Taxable amount of lobbying and political expenditures (line 85d less 85e)	85 f		
g	Does the organization elect to pay the section 6033(e) tax on the amount in 85f?	85 g		
h	If section 6033(e)(1)(A) dues notices were sent, does the organization agree to add the amount in 85f to its reasonable estimate of dues allocable to nondeductible lobbying and political expenditures for the following tax year?	85 h		
86	501(c)(7) organizations.—Enter: a Initiation fees and capital contributions included on line 12	86 a	N/A	
b	Gross receipts, included on line 12, for public use of club facilities	86 b	N/A	
87	501(c)(12) organizations.—Enter: a Gross income from members or shareholders	87 a	N/A	
b	Gross income from other sources. (Do not net amounts due or paid to other sources against amounts due or received from them.)	87 b	N/A	
88	At any time during the year, did the organization own a 50% or greater interest in a taxable corporation or partnership? If "Yes," complete Part IX	88		X
89 a	501(c)(3) organizations.—Enter: Amount of tax imposed on the organization during the year under: section 4911 ▶ ; section 4912 ▶ ; section 4955 ▶			
b	501(c)(3) and 501(c)(4) organizations.—Did the organization engage in any section 4958 excess benefit transaction during the year? If "Yes," attach a statement explaining each transaction	89 b		X
c	Enter: Amount of tax imposed on the organization managers or disqualified persons during the year under sections 4912, 4955, and 4958			
d	Enter: Amount of tax in 89c, above, reimbursed by the organization			
90 a	List the states with which a copy of this return is filed WASHINGTON, D.C.			
b	Number of employees employed in the pay period that includes March 12, 1998 (See instructions.).	90 b	2	
91	The books are in care of KISCO MANAGEMENT CORP. Telephone no. 914-242-2394 Located at 111 RADIO CIRCLE MT. KISCO, NY ZIP + 4 10549			
92	Section 4947(a)(1) nonexempt charitable trusts filing Form 990 in lieu of Form 1041—Check here <input type="checkbox"/> and enter the amount of tax-exempt interest received or accrued during the tax year	92	N/A	

Enter gross amounts unless otherwise indicated.

Note: (Line 105 plus line 1d, Part I, should equal the amount on line 12, Part I.)

[illegible]

Name, address, and employer identification number of corporation or partnership	Percentage of ownership interest	Nature of business activities	Total income	End-of-year assets
	%			
	%			
	%			
	%			

JSA
8E1050 2.000

FORM 990, PART I - LIST OF CONTRIBUTORS
 (NOT OPEN TO PUBLIC INSPECTION)

NAME AND ADDRESS	DATE	DIRECT PUBLIC SUPPORT
JEROME KOHLBERG C/O KISCO MANAGEMENT CORP. 111 RADIO CIRCLE, MT. KISCO, NY 10549	VAR	3,041,029.
VARIOUS CONTRIBUTORS	VAR	225.
TOTAL CONTRIBUTION AMOUNTS		3,041,254.

FORM 990, PART I - INTEREST ON SAVINGS AND TEMPORARY CASH INVESTMENTS

DESCRIPTION

AMOUNT

JP MORGAN PRIME MONEY MARKET FUND

1,852.

TOTAL

1,852.

21 04 42 330

OFFICE

FORM 990, PART II - GRANTS AND ALLOCATIONS PAID DURING THE YEAR

RELATIONSHIP TO SUBSTANTIAL CONTRIBUTOR		PURPOSE OF GRANT OR CONTRIBUTION	AMOUNT
RECIPIENT NAME AND ADDRESS	AND FOUNDATION STATUS OF RECIPIENT		
COMMON CAUSE - PROJECT INDEPENDENCE 1260 CONNECTICUT AVENUE, NW WASHINGTON, D.C. 20036	NONE	TO IDENTIFY & MOBILIZE KEY ACTIVISTS ACROSS THE COUNTRY IN SUPPORT OF CAMPAIGN FINANCE REFORM	500,212.
GRANTS PAID		TOTAL CONTRIBUTIONS PAID	500,212.

FORM 990, PART II - OTHER EXPENSES

DESCRIPTION	TOTAL	PROGRAM SERVICES	MANAGEMENT AND GENERAL
OFFICE EXPENSE	449.		449.
BANK SERVICE FEE	704.		704.
MISCELLANEOUS	75.		75.
INSURANCE	4,301.		4,301.
DUES & SUBSCRIPTIONS	127.		127.
COMPUTER CONSULTING & SUPPORT	242.		242.
MAINTENANCE & REPAIRS	1,901.		1,901.
PAYROLL PROCESSING FEES	1,602.		1,602.
LICENSING & FILING FEES	215.		215.
TANGIBLE PERSONAL PROPERTY TAX	625.		625.
ADVERTISING	2,017,163.	2,017,163.	
CONSULTING & PROFESSIONAL FEES	132,931.	132,931.	
PROGRAM EXPENSES	8,578.	8,578.	
TOTALS	2,168,913.	2,158,672.	10,241.

FORM 990, PART III - ORGANIZATION'S PRIMARY EXEMPT PURPOSE
=====

**TO STUDY AND EDUCATE THE PUBLIC ABOUT CAMPAIGN FINANCE REFORM
ON THE FEDERAL LEVEL.**

2025-04-11 14:04:38

FORM 990, PART IV - OTHER LIABILITIES

DESCRIPTION

**ENDING
BOOK VALUE**

CASH OVERDRAFT

56,758.

TOTALS

56,758.

STATEMENT 6

FORM 990, PART V - LIST OF OFFICERS, DIRECTORS, AND TRUSTEES

NAME AND ADDRESS	TITLE AND TIME DEVOTED TO POSITION	TERM PERIODS
ROBERT KILEY 59 EAST 90TH ST. NEW YORK, NY 10128	DIRECTOR AS REQ.	11/1/98 - 12/31/98
WALTER W. FARLEY C/O KISCO MANAGEMENT CORP. 111 RADIO CIRCLE MOUNT KISCO, NY 10549	DIRECTOR & VICE PRES/SECY DIRECTOR + PRESIDENT/SECY AS REQ.	11/1/98 - 12/14/98 12/14/98 - 12/31/98
EILEEN CAPONE C/O KISCO MANAGEMENT CORP. 111 RADIO CIRCLE MOUNT KISCO, NY 10549	DIRECTOR & TREASURER AS REQ.	11/1/98 - 12/31/98
DOUGLAS C. BERMAN 200 SOUTH MOUNTAIN AVE. MONTCLAIR, NJ 07042	DIRECTOR & PRESIDENT AS REQ.	11/1/98 - 12/4/98
REBECCA CAIN 2313 SOUTH WALNUT DRIVE ST. ALBANS, WV 25177	DIRECTOR AS REQ.	12/14/98 - 12/31/98

DEPRECIATION

Listed Property

AMORTIZATION

***Assets Retired**

EXHIBIT B

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THE COMMUNICATIONS COMPANY
MEDIA RECONCILIATION
COST PER SPOT

REVISED 11/9/99

CLIENT NAME CAMPAIGN FOR AMERICA
CLIENT NO.: 272
FLIGHT DATE: FALL 1998, 10/16/98 - 11/2/98
SPOT NAMES: CFA10030 "DOG", CFA10230 "AGAIN"

STATION	STATE	CHECK DATE	CHECK NO.	ACTUAL BILLING	GROSS NET PAID TO STATION	GROSS NET DUE TO STATION	BUY VARIANCE	COMMISSION	GROSS DUE CFA10030 DOG	GROSS DUE CFA10230 AGAIN	AMT. REC'D FROM CLIENT	FLIGHT VARIANCE
TV ADVERTISING												
KFVS-TV	KY	10/23/98	428	17,188.00	14,609.80	14,609.80	0.00	1,718.80	0.00	16,328.60	466,029.00	
KFVS-TV	KY	10/14/98	35200	8,565.00	17,565.25	7,280.25	(10,285.00)	856.50	8,136.75	0.00		
KFVS-TV	KY			0.00	(8,092.00)	0.00	8,092.00	0.00	0.00	0.00		
KFVS-TV	KY			2,580.00	0.00	2,193.00	2,193.00	258.00	2,451.00	0.00		
WAVE-TV	KY	10/14/98	35199	2,860.00	19,286.50	2,431.00	(16,855.50)	286.00	2,717.00	0.00		
WAVE-TV	KY			14,110.00	0.00	11,993.50	11,993.50	1,411.00	13,404.50	0.00		
WAVE-TV	KY			5,720.00	0.00	4,862.00	4,862.00	572.00	5,434.00	0.00		
WAVE-TV	KY			0.00	(663.00)	0.00	663.00	0.00	0.00	0.00		
WAVE-TV	KY	10/23/98	423	16,665.00	14,828.25	14,165.25	(663.00)	1,666.50	0.00	15,831.75		
WAVE-TV	KY	10/30/98	35482	10,695.00	2,758.25	9,090.75	6,332.50	1,069.50	0.00	10,160.25		
WBKO-TV	KY			1,640.00	0.00	1,394.00	1,394.00	164.00	1,558.00	0.00		
WBKO-TV	KY			0.00	(119.00)	0.00	119.00	0.00	0.00	0.00		
WBKO-TV	KY	10/23/98	429	3,025.00	10,416.75	2,571.25	(7,845.50)	302.50	2,873.75	0.00		
WBKO-TV	KY	10/23/98	421	6,350.00	5,397.50	5,397.50	0.00	635.00	0.00	6,032.50		
WDKY-TV	KY	10/14/98	35201	800.00	680.00	680.00	0.00	80.00	760.00	0.00		
WDKY-TV	KY	10/30/98	35504	20,900.00	17,765.00	17,765.00	0.00	2,090.00	0.00	19,855.00		
WDRB-TV	KY	10/14/98	35191	900.00	765.00	765.00	0.00	90.00	855.00	0.00		
WDRB-TV	KY	10/23/98	425	16,400.00	13,940.00	13,940.00	0.00	1,640.00	0.00	15,580.00		
WEHT-TV	KY	10/14/98	35188	4,040.00	13,914.50	3,434.00	(10,480.50)	404.00	3,838.00	0.00		
WEHT-TV	KY			0.00	(10,480.50)	0.00	10,480.50	0.00	0.00	0.00		
WEHT-TV	KY	10/14/98	35194	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
WEVU-TV	KY	11/17/98	35538	2,555.00	10,225.50	2,171.75	(8,053.75)	255.50	2,427.25	0.00		
WFIE-TV	KY			0.00	(8,053.75)	0.00	8,053.75	0.00	0.00	0.00		
WFIE-TV	KY	10/14/98	35190	10,100.00	29,983.75	8,585.00	(21,398.75)	1,010.00	9,595.00	0.00		
WHAS-TV	KY			21,375.00	0.00	18,168.75	18,168.75	2,137.50	20,306.25	0.00		
WHAS-TV	KY	10/23/98	424	28,225.00	25,436.25	23,991.25	(1,445.00)	2,822.50	0.00	26,813.75		
WHAS-TV	KY			0.00	(4,675.00)	0.00	4,675.00	0.00	0.00	0.00		
WKYT-TV	KY	10/14/98	35198	7,325.00	24,692.50	6,226.25	(18,466.25)	732.50	6,958.75	0.00		
WKYT-TV	KY			0.00	(49,733.50)	0.00	49,733.50	0.00	0.00	0.00		
WKYT-TV	KY	10/23/98	418	925.00	32,053.50	786.25	(31,267.25)	92.50	878.75	0.00		
WLEX-TV	KY	10/14/98	35192	7,800.00	11,836.25	6,630.00	(5,206.25)	780.00	7,410.00	0.00		
WLEX-TV	KY			9,825.00	0.00	8,351.25	8,351.25	982.50	9,333.75	0.00		
WLEX-TV	KY			2,945.00	0.00	2,503.25	2,503.25	294.50	2,797.75	0.00		

THE COMMUNICATIONS COMPANY
MEDIA RECONCILIATION
COST PER SPOT

REVISED 11/9/99

CLIENT NAME CAMPAIGN FOR AMERICA
CLIENT NO.: 272
FLIGHT DATE: FALL 1998, 10/16/98 - 11/2/98
SPOT NAMES: CFA10030 "DOG", CFA10230 "AGAIN"

STATION	STATE	CHECK DATE	CHECK NO.	ACTUAL BILLING	GROSS TO STATION	NET PAID TO STATION	NET DUE TO STATION	BUY VARIANCE	COMMISSION	GROSS DUE CFA10030 DOG	GROSS DUE CFA10230 AGAIN	AMT. RECD FROM CLIENT	FLIGHT VARIANCE
TV ADVERTISING													
WLEX-TV	KY	10/30/98	35527	8,525.00	3,357.50	7,246.25	0.00	3,888.75	852.50	0.00	8,098.75		
WLEX-TV	KY	10/23/98	420	0.00	9,537.00	0.00	0.00	(9,537.00)	0.00	0.00	0.00		
WKEY-TV	KY	10/23/98	422	59,515.00	17,446.25	50,587.75	0.00	33,141.50	5,951.50	0.00	56,539.25		
WKEY-TV	KY	10/30/98	35484	0.00	34,850.00	0.00	0.00	(34,850.00)	0.00	0.00	0.00		
WKEY-TV	KY			0.00	(20,676.25)	0.00	0.00	20,676.25	0.00	0.00	0.00		
WKEY-TV	KY	10/14/98	35195	1,985.00	20,655.00	1,687.25	9,243.75	(18,967.75)	198.50	1,885.75	0.00		
WPSD-TV	KY	10/23/98	426	10,875.00	10,668.75	3,982.25	0.00	(1,445.00)	1,087.50	0.00	10,331.25		
WPSD-TV	KY			4,685.00	0.00	3,982.25	0.00	3,982.25	468.50	4,450.75	0.00		
WPSD-TV	KY			0.00	(2,953.75)	0.00	0.00	2,953.75	0.00	0.00	0.00		
WPSD-TV	KY			2,255.00	0.00	1,916.75	0.00	1,916.75	225.50	2,142.25	0.00		
WPSD-TV	KY	10/14/98	35189	9,725.00	15,674.00	8,266.25	0.00	(7,407.75)	972.50	9,238.75	0.00		
WPSD-TV	KY	10/14/98	35196	1,225.00	4,670.75	1,041.25	0.00	(3,629.50)	122.50	1,163.75	0.00		
WSIL-TV	KY			2,345.00	0.00	1,993.25	0.00	1,993.25	234.50	2,227.75	0.00		
WSIL-TV	KY			0.00	(1,636.25)	0.00	0.00	1,636.25	0.00	0.00	0.00		
WSIL-TV	KY	10/23/98	427	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
WTVQ-TV	KY	10/14/98	35193	2,100.00	6,111.50	1,785.00	0.00	(4,326.50)	210.00	1,995.00	0.00		
WTVQ-TV	KY	10/23/98	419	4,710.00	4,683.50	4,003.50	0.00	(680.00)	471.00	0.00	4,474.50		
WTVQ-TV	KY			0.00	(5,006.50)	0.00	0.00	5,006.50	0.00	0.00	0.00		
TOTAL				331,458.00	281,739.30	281,739.30		0.00	33,145.80	124,839.50	190,045.60	466,029.00	(151,143.90)

EXHIBIT C

EXHIBIT C

Air Time Analysis for Campaign for America

Station	10/16/99	10/17/99	10/18/99	10/19/99	10/20/99	10/21/99	10/22/99	10/23/99	10/24/99	10/25/99	10/26/99	10/27/99	10/28/99	10/29/99	10/30/99	10/31/99	11/1/99	11/2/99	TOTAL	Per Square	Difference
WAVE 3 - DOG - AGAIN	2,880			3,040	3,320	2,840	2,680	3,040	1,450	780	2,860								22,690	22,690	0
WFVS 12 - DOG - AGAIN							2,893	2,893	1,140	1,639	2,580	3,320	2,560	3,340	2,060	1,450	1,235	2,700	16,665	16,665	0
WBKO 13 - DOG - AGAIN					375	725		850	1,075		1,640	2,109	2,181	2,794	4,104	1,140	1,639	3,221	17,188	17,188	0
WDKY 56 - DOG - AGAIN									400	400		2,035	2,225	1,860	2,270	575	615	1,315	10,695	10,695	0
WDRB 41 - DOG - AGAIN	900											1,000	1,500	1,000	700	400	400	1,350	6,350	6,350	0
WEHT 25 - DOG - AGAIN	1,900			2,140								2,350	1,750	2,350	1,750	750	4,350	24,000	37,300	37,300	0
WFIE 14 - DOG - AGAIN	375	1,025	780	375															4,040	4,040	0
WHAS 11 - DOG - AGAIN	5,725			4,375	3,875	4,550	4,325	4,600	875	3,150	(425)	4,650	2,500	5,775	7,450	1,800	1,550	4,925	31,050	31,475	0
WKYT 27 - DOG - AGAIN				925															28,650	28,225	0
WLEX 18 - DOG - AGAIN	4,200	500	600	2,500	2,570	1,725	1,010	2,820	600	1,100	2,945	1,010	2,040	1,010	1,070	1,350	660	1,385	20,570	20,570	0
WLKY 32 - DOG - AGAIN							475	560	950		2,475	3,785	285	960	2,960	3,350	4,700	41,000	8,525	8,525	0
WPSD 6 - DOG - AGAIN	1,855	450	150	2,230	2,115	2,855	1,565	1,815	725	650	2,255	1,840	2,140	1,500	1,815	950	650	1,980	53,255	59,515	0
WSIL 3 - DOG - AGAIN	400			825	625	625	200	200	270	425									16,665	16,665	0
WTVQ 36 - DOG - AGAIN	900		300	900															3,570	3,570	0
	18,935	1,975	1,830	17,310	12,880	13,320	13,998	17,003	6,410	8,144	14,330	690	860	910	960	450	250	590	2,100	2,100	0

* Do not have any invoice for this amount.
a - Net billing (credits are included). All others - the credits are not included in totals

TOTAL "DOG"
TOTAL "AGAIN"
128,920
194,213
324,133

(7,325)

**FEDERAL ELECTION COMMISSION
Washington, D.C.**

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
DEC 9 10 22 AM '99

In the Matter of:

Complaint of the National Republican
Senatorial Committee

No. MUR 4940

DECLARATION OF DOUGLAS C. BERMAN

I, Douglas C. Berman, declare and state as follows:

1. I was the President of Campaign for America ("CFA") from March 1997 to December 1998. Unless otherwise indicated, this declaration is based on my personal knowledge.

2. I have reviewed the Complaint filed with the Federal Election Commission ("FEC" or "Commission") by the National Republican Senatorial Committee ("NRSC") in the above-captioned proceeding. I have also reviewed the affidavit dated March 25, 1999, which I submitted pursuant to a subpoena issued at the behest of the Republican National Committee in a lawsuit styled Republican National Committee and Gant Remon v. Federal Election Commission, Civ. No. 98-CV-1207 (WBR) (D.D.C.) ("the Berman Affidavit"), a copy of which is attached to NRSC's Complaint.

3. In 1997 and 1998, CFA undertook a series of activities to further the reform of this country's campaign finance laws. The purpose of those activities was to enhance public support for campaign finance reform, and to encourage elected officials to support campaign finance reform legislation. These activities included the lobbying activities that are described in paragraphs 4 and 8 of the Berman Affidavit; a nationwide grass-roots petitioning effort and a lobbying phone bank; the radio issue advocacy commercials described in paragraph 10 of the Berman Affidavit; the \$1.1 million, five-state radio and television issue advocacy commercials described in paragraph 11 of the Berman Affidavit; and the newspaper issue advocacy ads that CFA sponsored, as described in paragraph 12 of the Berman Affidavit.

4. As a part of this effort, CFA sponsored two television advertisements concerning the positions on campaign finance reform of the candidates in the 1998 election for the U.S. Senate in Kentucky, Jim Bunning and Scotty Baesler. The first advertisement, entitled "Dog," showed various pictures of Mr. Bunning, with a voice-over recitation of the following text:

Scotty Baesler was a leader in passing a bill
to clean up our campaign finances.

Jim Bunning? On campaign finance reform,
he voted no. Why?

Because Bunning has been sniffing out
special interest money to feed his campaign.

In fact, HMOs gave Bunning thousands in
campaign contributions, then Bunning flip-
fopped and opposed real HMO reform.

Now Bunning is hunting for even more
special interest money.

Taking special interest money. Flip-

flopping on HMO reform.

In Kentucky, that dog just don't hunt.

The other advertisement, called "Again," also contained pictures of Mr. Bunning.

The voice-over text of the advertisement was as follows:

Remember how Jim Bunning took money from HMOs, then opposed a patients protection act?

Well he's at it again. Hunting for campaign money, rolling over for special interests.

Now we learn, Bunning took thousands from health care interests, then voted to slash Medicare. Forcing seniors into expensive private health insurance.

With all this special interest money, no wonder Bunning voted "no" on campaign finance reform.

On November 3rd, send Jim Bunning and his hungry dogs, back to the pound.

At the end of each advertisement, a conspicuous printed message appeared on the screen which stated that the advertisement had been paid for by Campaign for America, and that Campaign for America is not affiliated with any candidate or political committee.

5. The purpose of these advertisements was to present a description of the candidates' contrasting positions on campaign finance reform, and to demonstrate that campaign finance reform is an important issue to voters. To the best of my knowledge, CFA has not sponsored any other advertisement that mentioned by name any candidate for federal office in that capacity.

6. Insofar as CFA is concerned, I oversaw the production of the two Kentucky advertisements, and, as president of CFA, I had final authority over the advertisements' contents.

7. In the Berman Affidavit, I described both "Dog" and "Again," and attached copies of the voice-over texts. My understanding, based on a review of the NRSC Complaint, is that the NRSC's allegations center on the advertisement called "Again."

8. CFA contracted with The Communications Company, a media consulting firm, for the production of the Kentucky advertisements and the acquisition of television commercial time slots from Kentucky television stations. Based on CFA's advertising plan, The Communications Company projected that the total cost of the effort, including both advertisements, would be \$466,029. CFA received an invoice for that amount from The Communications Company on October 13, 1998, and a true and correct copy of that invoice is attached as Exhibit L to the Berman Affidavit. On behalf of CFA, I approved that invoice for payment on October 14, 1998, and instructed the individuals who manage CFA's financial affairs, including CFA's Treasurer, Eileen Capone, to make arrangements for timely payment of the invoice. Although I understand that the funds were not transferred to The Communications Company until October 16, 1998, as a result of an administrative problem surrounding the opening of a new CFA bank account, my understanding at the time was, and remains today, that CFA incurred the obligation to pay The Communications Company \$466,029 on or before October 14, 1999, and set in motion on that date the transfer of funds to cover that obligation and pay for the Kentucky ads.

9. Records maintained by The Communications Company confirm that the expenditure for the Kentucky ads occurred on October 14, 1998. The document attached hereto as Exhibit A is a true and correct copy of a ledger maintained by The Communications Company which shows the actual timing of the payments to broadcasters for each of the two Kentucky advertisements. The document shows that, beginning on October 14, 1998, the Communications Company began to issue checks for payment of the television commercial time slots for "Dog." These checks were issued by The Communications Company on CFA's behalf beginning on October 14, 1998, against CFA's obligation and payment of \$466,029.

10. As the ledger maintained by The Communications Company (Exhibit A) also shows, all of the payments for television commercial time slots during the period October 14, 1998 to October 22, 1998, concerned the advertisement entitled "Dog." Payments concerning the advertisement entitled "Again" -- that is, the advertisement cited in the NRSC Complaint -- did not begin until October 23, 1998.

11. The Communications Company's ledger (Exhibit A) also reveals that the total cost of the advertisement entitled "Again" was \$190,045.60. The total cost of the entire advertising campaign, including the commercials entitled "Again" and "Dog," was \$314,885.10. Because The Communications Company was unable to purchase all of the commercial slots that had originally been planned, the cost of the advertising campaign was less than originally projected. I understand that The Communications Company has reimbursed CFA for the amount by which the \$466,029 payment exceeded the actual cost of the ads.

12. CFA always examined its activities with care to determine whether a public disclosure of information regarding any particular activity would be necessary or appropriate. CFA was aware of the FEC's position regarding the disclosure of campaign-related communications by advocacy groups such as CFA, and in particular the FEC's strong stance favoring the disclosure of information regarding ads that compare or evaluate the views or records of candidates for federal office, particularly in a way that appears to convey support for one candidate over another. The FEC's traditional position on that issue is, in fact, consistent with CFA's principles and its overall view that communications which compare or evaluate the different views of the candidates for election to a national office should be treated as reportable "independent expenditures."

13. Given the FEC's concern regarding advertisements that name candidates for federal office by name, and CFA's own similar position on this issue, CFA considered the treatment of the Kentucky ads under federal campaign finance law and Commission regulations. CFA concluded that the ads were a significant departure from the CFA's regular program of issue advocacy having no relationship to any candidate or campaign for federal office. Accordingly, CFA concluded that public disclosure of CFA's sponsorship of the ads and of the source of the funds used to sponsor the ads -- that is, treatment of the cost of the ads as an "independent expenditure" under the campaign finance laws -- would be appropriate.

14. Following discussions with a consultant retained by CFA (who was a former FEC employee) regarding the mechanics of reporting CFA's Kentucky ads, CFA determined to disclose the details of its advertising campaign by submitting a report to the FEC on FEC Form 5, the form for reporting "independent

expenditures" by persons other than political committees. I obtained a copy of that form, inserted the pertinent information, and faxed it to the FEC on October 21, 1998. The FEC confirmed receipt of the submission the next day. A true and correct copy of the submission, which shows the Commission's October 22, 1999 date stamp, is attached as Exhibit A to the Berman Affidavit. (CFA also filed a copy of the Form 5 with the Kentucky Secretary of State.)

15. On October 28, 1998, The Wall Street Journal published an editorial criticizing CFA and the Kentucky advertising campaign. A true and correct copy of the editorial, is attached hereto as Exhibit B. The Journal correctly identified CFA as the sponsor of the ads, named Mr. Kohlberg as CFA's principal contributor, as reported on the Form 5, and stated the expected total cost of the advertising campaign (based, as discussed above, on CFA's and The Communications Company's original projection and the corresponding amount which CFA had paid to The Communications Company). To the best of my knowledge, the only source of the specific information published in The Wall Street Journal article regarding Mr. Kohlberg's contribution and the cost of the ad campaign was CFA's reports to the FEC and the Kentucky Secretary of State.

16. In response to the October 28, 1998 editorial, CFA's principal contributor, Mr. Kohlberg, submitted a letter to the editor of The Wall Street Journal. The letter, which was published on November 5, 1998, states in part: "Campaign for America announced that it was entering the [Kentucky Senate] race, filed with the FEC, telling who its contributors were and the size of its expenditures so that all citizens would know what it was doing. This is in sharp contrast to others who did not divulge their source of money. . . . We are against the conduct of groups running 'issue advocacy' ads subversively in support of candidates while hiding the

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sources of their funding." My understanding and belief is that Mr. Kohlberg's statement accurately summarizes both CFA's views regarding purported "issue advocacy" ads that address the merits of candidates for federal office, and CFA's conduct with respect to the Kentucky ad campaign.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed at West Orange, NJ this 8th day of December, 1999.



Douglas C. Bernan

EXHIBIT A

EXHIBIT A

THE COMMUNICATIONS COMPANY
MEDIA RECONCILIATION
COST PER SPOT

REVISED 11/9/99

CLIENT NAME CAMPAIGN FOR AMERICA
CLIENT NO.: 272
FLIGHT DATE: FALL 1998, 10/16/98 - 11/2/98
SPOT NAMES: CFA10030 "DOG", CFA10230 "AGAIN"

STATION	STATE	CHECK DATE	CHECK NO.	ACTUAL GROSS BILLING	NET PAID TO STATION	NET DUE TO STATION	BUY VARIANCE	COMMISSION	GROSS DUE CFA10030 DOG	GROSS DUE CFA10230 AGAIN	AMT. REC'D FROM CLIENT	FLIGHT VARIANCE
TV ADVERTISING												
KFVS-TV	KY	10/23/98	428	17,188.00	14,609.80	14,609.80	0.00	1,718.80	0.00	16,328.60	466,029.00	
KFVS-TV	KY	10/14/98	35200	8,565.00	17,565.25	7,280.25	(10,285.00)	856.50	8,136.75	0.00		
KFVS-TV	KY			0.00	(8,092.00)	0.00	8,092.00	0.00	0.00	0.00		
KFVS-TV	KY			2,580.00	0.00	2,193.00	2,193.00	258.00	2,451.00	0.00		
WAVE-TV	KY	10/14/98	35199	2,860.00	19,286.50	2,431.00	(16,855.50)	286.00	2,717.00	0.00		
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WAVE-TV	KY			0.00	(663.00)	0.00	663.00	0.00	0.00	0.00		
WAVE-TV	KY	10/23/98	423	16,665.00	14,828.25	14,165.25	(663.00)	1,666.50	0.00	15,831.75		
WBO-TV	KY	10/30/98	35482	10,695.00	2,758.25	9,090.75	6,332.50	1,069.50	0.00	10,160.25		
WBO-TV	KY			1,640.00	0.00	1,394.00	1,394.00	164.00	1,558.00	0.00		
WBO-TV	KY			0.00	(119.00)	0.00	119.00	0.00	0.00	0.00		
WBO-TV	KY	10/23/98	429	3,025.00	10,416.75	2,571.25	(7,845.50)	302.50	2,873.75	0.00		
WDKY-TV	KY	10/23/98	421	6,350.00	5,397.50	5,397.50	0.00	635.00	0.00	6,032.50		
WDKY-TV	KY	10/14/98	35201	800.00	680.00	680.00	0.00	80.00	760.00	0.00		
WDRB-TV	KY	10/30/98	35504	20,900.00	17,765.00	17,765.00	0.00	2,090.00	0.00	19,855.00		
WDRB-TV	KY	10/14/98	35191	900.00	765.00	765.00	0.00	90.00	855.00	0.00		
WDRB-TV	KY	10/23/98	425	16,400.00	13,940.00	13,940.00	0.00	1,640.00	0.00	15,580.00		
WEHT-TV	KY	10/14/98	35188	4,040.00	13,914.50	3,434.00	(10,480.50)	404.00	3,838.00	0.00		
WEHT-TV	KY			0.00	(10,480.50)	0.00	10,480.50	0.00	0.00	0.00		
WEHT-TV	KY	10/14/98	35194	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
WEHT-TV	KY	11/17/98	35538	2,555.00	10,225.50	2,171.75	(8,053.75)	255.50	2,427.25	0.00		
WHE-TV	KY			0.00	(8,053.75)	0.00	8,053.75	0.00	0.00	0.00		
WHE-TV	KY	10/14/98	35190	10,100.00	29,983.75	8,585.00	(21,398.75)	1,010.00	9,595.00	0.00		
WHE-TV	KY			21,375.00	0.00	18,168.75	18,168.75	2,137.50	20,306.25	0.00		
WHE-TV	KY	10/23/98	424	28,225.00	25,436.25	23,991.25	(1,445.00)	2,822.50	0.00	26,813.75		
WHE-TV	KY			0.00	(4,675.00)	0.00	4,675.00	0.00	0.00	0.00		
WKYT-TV	KY	10/14/98	35198	7,325.00	24,692.50	6,226.25	(18,466.25)	732.50	6,958.75	0.00		
WKYT-TV	KY			0.00	(49,733.50)	0.00	49,733.50	0.00	0.00	0.00		
WKYT-TV	KY	10/23/98	418	925.00	32,053.50	786.25	(31,267.25)	92.50	878.75	0.00		
WLEX-TV	KY	10/14/98	35192	7,800.00	11,836.25	6,630.00	(5,206.25)	780.00	7,410.00	0.00		
WLEX-TV	KY			9,825.00	0.00	8,351.25	8,351.25	982.50	9,333.75	0.00		
WLEX-TV	KY			2,945.00	0.00	2,503.25	2,503.25	294.50	2,797.75	0.00		

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THE COMMUNICATIONS COMPANY
MEDIA RECONCILIATION
COST PER SPOT

REVISED 11/9/99

CLIENT NAME CAMPAIGN FOR AMERICA
CLIENT NO.: 272
FLIGHT DATE: FALL 1998, 10/16/98 - 11/2/98
SPOT NAMES: CFA10030 "DOG", CFA10230 "AGAIN"

STATION	STATE	CHECK DATE	CHECK NO.	ACTUAL BILLING	GROSS TO STATION	NET PAID TO STATION	NET DUE TO STATION	BUY VARIANCE	COMMISSION	GROSS DUE CFA10030 DOG	GROSS DUE CFA10230 AGAIN	AMT. REC'D FROM CLIENT	FLIGHT VARIANCE
TV ADVERTISING													
WLEX-TV	KY	10/30/98	35527	8,525.00	3,357.50	7,246.25	3,888.75	852.50	0.00	0.00	8,098.75		
WLEX-TV	KY	10/23/98	420	0.00	9,537.00	0.00	(9,537.00)	0.00	0.00	0.00	0.00		
WLKY-TV	KY	10/23/98	422	59,515.00	17,446.25	50,587.75	33,141.50	5,951.50	0.00	0.00	56,539.25		
WLKY-TV	KY	10/30/98	35484	0.00	34,850.00	0.00	(34,850.00)	0.00	0.00	0.00	0.00		
WLKY-TV	KY			0.00	(20,676.25)	0.00	20,676.25	0.00	0.00	0.00	0.00		
WLKY-TV	KY	10/14/98	35195	1,985.00	20,655.00	1,687.25	(18,967.75)	198.50	1,885.75	0.00	0.00		
WPSD-TV	KY	10/23/98	426	10,875.00	10,688.75	9,243.75	(1,445.00)	1,087.50	0.00	10,331.25	0.00		
WPSD-TV	KY			4,685.00	0.00	3,982.25	3,982.25	468.50	4,450.75	0.00	0.00		
WPSD-TV	KY			0.00	(2,953.75)	0.00	2,953.75	0.00	0.00	0.00	0.00		
WPSD-TV	KY			2,255.00	0.00	1,916.75	(7,407.75)	225.50	2,142.25	0.00	0.00		
WPSD-TV	KY	10/14/98	35189	9,725.00	15,674.00	8,266.25	(7,407.75)	972.50	9,238.75	0.00	0.00		
WPSD-TV	KY	10/14/98	35196	1,225.00	4,670.75	1,041.25	(3,629.50)	122.50	1,163.75	0.00	0.00		
WSIL-TV	KY			2,345.00	0.00	1,993.25	1,993.25	234.50	2,227.75	0.00	0.00		
WSIL-TV	KY			0.00	(1,636.25)	0.00	1,636.25	0.00	0.00	0.00	0.00		
WSIL-TV	KY	10/23/98	427	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
WTVQ-TV	KY	10/14/98	35193	2,100.00	6,111.50	1,785.00	(4,326.50)	210.00	1,995.00	0.00	0.00		
WTVQ-TV	KY	10/23/98	419	4,710.00	4,683.50	4,003.50	(680.00)	471.00	0.00	4,474.50	0.00		
WTVQ-TV	KY			0.00	(5,006.50)	0.00	5,006.50	0.00	0.00	0.00	0.00		
TOTAL				331,458.00	281,739.30	281,739.30	0.00	33,145.80	124,839.50	190,045.60	466,029.00	(151,143.90)	

REVIEW & OUTLOOK

Do as We Say

Every election has its hilarities, and for our money this year's comedy award goes to the campaign-finance reformers. In the name of cleaning up campaigns, they're throwing mud pies.

Exhibit A is Kentucky, home of a bitter, closely fought Senate race. Democrat Scotty Baesler is trying to make campaign finance a big theme against Republican Jim Bunning. This is fine by us, because that's what elections are supposed to decide. But guess what? Mr. Baesler's election is being promoted by a \$466,000 attack-ad campaign financed by a super-rich New Yorker who, for all we know, has never set foot in Kentucky.

This Daddy Warbucks is Jerome Kohlberg, co-founder of KKR, the leveraged-buyout firm. He's the main financier of something called the Campaign for America, an outfit lobbying to restrict political speech—everyone's speech, that is, except its own.

Now, \$466,000 is a lot of dough anywhere, but especially in Kentucky. And we aren't talking about high-minded issue ads here. Mr. Kohlberg's contribution to democracy is a TV spot that goes like this: "Scotty Baesler, a leader for campaign-finance reform. Jim Bunning? Hunting for money to fund his campaign. After big HMOs gave him thousands in contributions, Bunning flip-flopped and opposed HMO reform. Now Bunning is hunting for more money—still listening to special interests, not the people of Kentucky." A second uplifting spot hits Mr. Bunning on Medicare—just the thing to rile up Kentucky seniors.

Note the double standards here. HMOs are special interests, but Campaign for America isn't. Mr. Bunning is in the pocket of out-of-staters, though Campaign for America runs out of the Beltway. And there's more. It turns out that this attack-ad campaign violates the letter of Mr. Baesler's own campaign-finance reform proposal.

The Baesler proposal, introduced in April, seeks to limit such outside campaign spending to \$25,000—a tad less than Mr. Kohlberg's \$466,000. Mr. Baesler also wants opponents to be told of such a campaign before it starts

within 10 days of an election—but, sorry, Campaign for America didn't give a heads up to Mr. Bunning. And within 90 days of an election, Mr. Baesler wants to restrict money for such ads if they use the name or likeness of a candidate. But Mr. Kohlberg's ads paint a bull's-eye on Jim Bunning.

When we asked Baesler campaign manager J.B. Poersch if Mr. Baesler had requested that the ads be pulled, he replied: "The campaign doesn't have plans to unilaterally disarm." A spokeswoman for Campaign for America said, "We would prefer not to be running those ads, but we are playing by the rules" as they are now. So Mr. Baesler gets to have it both ways: Pose as a saintly opponent of big money ads while benefiting from those ads. Sweet.

A similar fake-out is going on in Wisconsin, where Democrat Russ Feingold is fighting to remain the Senator from Common Cause. Liberal/actor Robert Redford and Johnny Apple of the New York Times have both flown in to portray Mr. Feingold, co-sponsor of a bill restricting political speech, as a saint for refusing to accept ads paid for with "soft money" from his own party.

But what Mr. Feingold won't tell you is that both the AFL-CIO and Sierra Club are spending big money on his behalf. Like Mr. Kohlberg's Kentucky ads, this might as well be soft money. The source is merely outside groups rather than the party itself—a distinction without much difference since Big Labor and the Sierra Club are more or less Democratic subsidiaries.

This is of course their right—or at least it will be until Messrs. Baesler and Feingold gain enough power to pass their campaign "reforms." That's why we applaud the National Right to Life Committee for jumping into the Kentucky race with a radio spot illuminating Mr. Baesler's hypocrisy.

Come to think of it, a silver lining to this election is that if Messrs. Feingold and Baesler both lose, the liberal, speech-restricting versions of campaign reform that they favor will go down with them. Never to return, we hope.